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CHAPTER NO. 302

[SB 290]

AN ACT REQUIRING CERTAIN WATER AND SANITATION INFORMATION TO BE SUBMITTED WITH A PRELIMINARY PLAT FOR LOCAL SUBDIVISION REVIEW; REQUIRING THE INFORMATION TO CONFORM WITH RULES AND STANDARDS ADOPTED AND PUBLISHED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; PROHIBITING A GOVERNING BODY FROM REQUIRING ADDITIONAL WATER AND SANITATION INFORMATION UNLESS CERTAIN PROCEDURES ARE FOLLOWED; REQUIRING A GOVERNING BODY TO COLLECT PUBLIC COMMENT ON THE WATER AND SANITATION INFORMATION AND REQUIRING THE SUBDIVIDER TO FORWARD THE INFORMATION AND PUBLIC COMMENT ON PROPOSED SUBDIVISIONS TO THE APPROPRIATE REVIEWING AUTHORITY; ALLOWING A GOVERNING BODY TO CONDITION APPROVAL ON APPROVAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR ON CERTAIN WATER AND SANITATION INFORMATION BEING PROVIDED; PROHIBITING A GOVERNING BODY FROM CONDITIONALLY APPROVING OR DENYING A PROPOSED SUBDIVISION UNLESS THE DECISION IS BASED ON REGULATIONS THAT THE GOVERNING BODY IS AUTHORIZED TO ENFORCE; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED; AND AMENDING SECTIONS 76-3-504, 76-3-511, 76-3-601, 76-3-604, 76-3-608, 76-4-104, AND 76-4-125, MCA.

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

Section 1. Section 76-3-504, MCA, is amended to read:

“76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(b) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(d) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(f) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, ~~at a minimum,~~ meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104; for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and [section 4] for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of utilities;

(g) provide procedures for the administration of the park and open-space requirements of this chapter;

(h) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(i) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(j) except as provided in this subsection, require the subdivider to establish ditch easements in the subdivision that are in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots; are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner. Establishment of easements pursuant to this subsection (1)(j) is not required if:

(i) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(ii) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the

preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(k) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(l) require the subdivider to describe, dimension, and show utility easements in the subdivision on the final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of utility facilities for the provision of utility services within the subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.”

Section 2. Section 76-3-511, MCA, is amended to read:

“76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a ~~rule~~ *regulation* under 76-3-501 or 76-3-504(1)(f)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a ~~rule~~ *regulation* to implement 76-3-501 or 76-3-504(1)(f)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body’s conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a ~~rule~~ *regulation* of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the ~~rule~~ *regulation*. If the governing body determines that the ~~rule~~ *regulation* is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the ~~rule~~ *regulation* to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty

to comply with the challenged ~~rule~~ *regulation*. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a ~~rule~~ *regulation* review under subsection (4)(a) if the governing body adopts a ~~rule~~ *regulation* after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body ~~rule~~ *regulation*.”

Section 3. Section 76-3-601, MCA, is amended to read:

“76-3-601. Submission of preliminary plat for review — *water and sanitation information required*. (1) Except when a plat is eligible for summary review pursuant to 76-3-505, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements *and must be accompanied by the preliminary water and sanitation information required under [section 4]*.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.”

Section 4. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

- (B) surface water features;
- (C) springs;
- (D) irrigation ditches;
- (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
- (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
- (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
 - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
- (b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality;
- (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;
- (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
 - (i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;
 - (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
 - (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);
- (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:
 - (i) obtained from well logs or testing of onsite or nearby wells;
 - (ii) obtained from information contained in published hydrogeological reports; or
 - (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;
- (f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;
- (g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within

and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(2) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511.

Section 5. Section 76-3-604, MCA, is amended to read:

“76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the provisions of this chapter and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 60 working days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat.

(4) (a) *The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to [section 4] and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.*

(b) *The subdivider shall, as part of the subdivider’s application for sanitation approval, forward the comments or the summary provided by the governing body to the:*

(i) *reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and*

(ii) *local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.*

(5) (a) *For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.*

(b) *For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to [section 4], that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.”*

Section 6. Section 76-3-608, MCA, is amended to read:

“76-3-608. Criteria for local government review. (1) The basis for the governing body’s decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental

assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (7) of this section or except as provided in 76-3-505 and 76-3-509, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.

(7) The governing body may exempt subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

- (i) addresses the criteria in subsection (3)(a);
 - (ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);
 - (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and
 - (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and
- (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:
- (i) apply to the entire area subject to the exemption; and
 - (ii) address the criteria in subsection (3)(a), as described in the growth policy.

(8) *A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to [section 4] or public comment received pursuant to 76-3-604 on the information provided pursuant to [section 4] only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.*

Section 7. 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

(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 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 [section 4].*

Section 8. 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(4)*, 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) Except as provided in 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 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 that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), 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 9. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 4].

Approved April 19, 2005

CHAPTER NO. 303

[SB 412]

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF ELEVATOR CONTRACTORS, ELEVATOR MECHANICS, AND ELEVATOR INSPECTORS; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE FOR A LIMITED MECHANIC'S LICENSE AND A LIMITED ELEVATOR CONTRACTOR'S LICENSE; PROVIDING FOR THE APPOINTMENT OF A LICENSED ELEVATOR MECHANIC TO THE BUILDING CODES COUNCIL;

REGULATING THE DESIGN, CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REPAIR, INSPECTION, INSTALLATION, AND TESTING OF ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER EQUIPMENT; AMENDING SECTION 50-60-115, MCA; REPEALING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Definitions. Unless the context requires otherwise, in [sections 1 through 14], the following definitions apply:

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

(2) “Elevator contractor” means any person intending to engage in the business of installing, altering, or repairing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22].

(3) “Elevator inspector” means any person intending to engage in inspecting elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22].

(4) “Elevator mechanic” means any person intending to engage in installing, altering, repairing, or testing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22].

Section 2. Rulemaking — records. The department may adopt rules for the administration of [sections 1 through 14] and for the licensing and disciplining of elevator mechanics, elevator contractors, and elevator inspectors. The department shall adopt rules to provide for a limited mechanic’s license and a limited elevator contractor’s license.

Section 3. License required. (1) A person may not engage in the work of an elevator mechanic or elevator inspector or engage in the business of an elevator contractor unless the person has received a license from the department.

(2) A person who receives a license under the provisions of [sections 1 through 14] shall carry the license or proof of licensure at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the department and be made known to each licensee when a license is issued.

(3) The department shall establish license fees and license renewal fees that are commensurate with the costs of administering the licensing provisions of [sections 1 through 14].

Section 4. Apprenticeship allowed. [Sections 1 through 14] do not prohibit a person from working as an apprentice with an elevator mechanic licensed under [sections 1 through 14] and under rules adopted by the department. The name and residence of each apprentice and the name and residence of the apprentice’s employer must be filed with the department, and a record must be kept by the department showing the name and residence of each apprentice.

Section 5. Elevator mechanic’s license — limited mechanic’s license. (1) A person intending to work as an elevator mechanic shall file a license application with the department on forms furnished by the department.

(2) Except as provided in subsection (3), an applicant shall furnish proof, under oath, that the person:

(a) has successfully completed a state-approved apprenticeship or other education program that meets requirements established by the department by rule; or

(b) has at least 3 years of experience, verified by current and previous employers, working with equipment subject to the provisions of [sections 15 through 22] and has passed the examination provided for in [section 6].

(3) The department shall adopt rules for the licensure, without examination, of an applicant who can demonstrate that the applicant has worked continuously as an elevator mechanic for the 3 years prior to [the effective date of this section] and has the requisite experience for licensure. An applicant under this section shall pay the required application fee and shall submit any required proof under oath.

(4) The department shall issue an elevator mechanic's license to an applicant that meets the requirements of this section.

(5) (a) The department may issue a limited mechanic's license to an applicant that authorizes a licensee to work only on platform lifts, stairway chairlifts, and dumbwaiters that are installed in private residences.

(b) The examination for a limited mechanic's license must be based on the applicable codes for the equipment that a licensee is authorized to install.

(c) The department shall issue a limited mechanic's license to an applicant that meets the requirements of this subsection (5).

Section 6. Elevator mechanic's examination — fee — third parties — reciprocity. (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of [section 5(2)(b)]. The department shall determine the subjects, scope, and acceptable level of performance for the examination.

(2) The department shall determine by rule the fees to be charged an applicant for each examination and reexamination that the department administers. The fees must be commensurate with costs.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with [section 5(2)(b)].

(4) The department may issue a license to an individual holding a valid license from another state that the department determines has standards substantially equal to [sections 1 through 14] upon application and without examination.

Section 7. Elevator inspector's license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

Section 8. Elevator contractor's license — limited elevator contractor's license. (1) A person intending to engage in business as an elevator contractor shall apply for a license as an elevator contractor on forms provided by the department.

(2) An applicant shall provide the department with the following:

(a) if the applicant is an individual or sole proprietor, the name, residential address, and business address of the applicant;

(b) if the applicant is a domestic business entity, the name and business address of the business entity and the name and residential address of the business entity's principal officer;

(c) if the applicant is a foreign business entity, the name and address of a state resident authorized to accept service of process or other notices on the business entity's behalf;

(d) evidence of insurance coverage required in [section 21]; and

(e) other information that the department may require.

(3) The department shall issue an elevator contractor's license to an applicant that meets the requirements of this section.

(4) The department may issue a limited elevator contractor's license to an applicant that limits a licensee to the business of installing, altering, and repairing elevators, platform lifts, stairway chairlifts, and dumbwaiters in private residences. The department shall issue a limited elevator contractor's license to an applicant that meets the requirements of this section.

Section 9. Temporary elevator mechanic's license. (1) (a) If, in the case of an emergency or disaster as defined in 10-3-103, the department determines that the number of licensed elevator mechanics is insufficient to cope with the emergency or disaster, the department shall contact the licensed elevator contractors operating in the state and request that the elevator contractors certify to the department any persons in their employ who have an acceptable combination of education and experience to perform elevator work without direct supervision.

(b) As soon as practicable, the department shall issue to a person certified pursuant to subsection (1)(a) a temporary elevator mechanic's license. The department may not charge a fee for a license issued under this section.

(c) The license may not be valid for more than 30 days. However, the department may renew the license for 30-day periods in the case of a continuing emergency or disaster.

(d) The department may limit a person's temporary license to certain equipment or to certain geographical areas.

(2) (a) An elevator contractor shall inform the department if there are not any licensed elevator mechanics available to perform elevator work on behalf of the elevator contractor.

(b) The elevator contractor may submit a list to the department of any persons that the elevator contractor certifies have an acceptable combination of documented education and experience to perform the work of an elevator mechanic without direct supervision.

(c) The department shall issue a temporary elevator mechanic's license to any person, certified by an elevator contractor, who applies for a license to the department on a form supplied by the department. The department may charge a fee for a temporary license issued under this subsection that is commensurate with the department's costs in administering this subsection (2).

(d) A temporary license issued under this subsection (2) is valid for a period of 30 days, and the department shall renew the license for additional 30-day periods as long as the shortage of licensed elevator mechanics exists and the

licensee is employed by the certifying elevator contractor. However, the department may refuse to renew a temporary license for any temporary licensee that the department determines has had an adequate opportunity to obtain a license under the provisions of [sections 5 and 6].

Section 10. License renewal — continuing education. (1) (a) All licenses issued under [sections 1 through 14] expire on a date set by department rule.

(b) A licensee may renew a license by filing an application with the department on a form provided by the department and by paying a renewal fee in an amount established by the department by rule.

(2) The department shall establish by rule continuing education requirements for persons licensed as elevator mechanics or elevator inspectors. The department may not require less than 8 hours of continuing education for each license term. The continuing education requirement must be met by the licensee taking all of the required hours of continuing education in the year prior to the expiration of the license. The rules must include requirements for instructor certification, course content, and recordkeeping.

(3) The department shall issue a renewal license to applicants who meet the requirements of this section.

Section 11. Reasonable fees — deposit of fees and fines. (1) All fees established by the department under [sections 1 through 14] must be commensurate with the respective program costs. Fees collected by the department under [sections 1 through 14] must be deposited in an account in the state special revenue fund for the use of the program.

(2) Fines collected under [sections 1 through 14] must be deposited in the state general fund.

Section 12. Proof of license. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or a licensed elevator mechanic or licensed elevator inspector has the right to ask a person doing work at a job site that requires an elevator mechanic's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in [section 13], from a person at a job site where the person is performing elevator mechanic work if the person fails to display an elevator mechanic's license or proof of licensure at the request of the department inspector.

Section 13. Failure to display license. (1) A citation issued by an employee of the department for failure to display an elevator mechanic's license or proof of licensure must include:

(a) the time and date on which the citation is issued;

(b) the name, residential address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) \$100 for the first offense;

(b) \$250 for the second offense; and

(c) \$500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the department, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance. The department may waive or refund the fine upon finding that the person has demonstrated acceptable proof of licensure.

(5) A person who refuses to sign and accept a citation is subject to the civil penalty provided for in 37-1-318.

Section 14. Penalty. (1) Except as provided in subsection (4), a person or corporation knowingly violating any provision of [sections 1 through 14] shall upon conviction of a violation:

(a) if the violator is a person, be punished by a fine of not more than \$500, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation, in the discretion of the court; and

(b) if the violator is a corporation, be punished by a fine of not more than \$1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who personally and knowingly participates in or is an accessory to any violation of [sections 1 through 14] by the partnership, association, or corporation is subject to the penalties prescribed for individuals.

(3) A violation of [sections 1 through 14] is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the department, prosecute any violation of the licensing requirements of [sections 1 through 14].

(4) A person who violates the provisions of [section 13] is not subject to an additional penalty under this section.

Section 15. Scope. (1) [Sections 15 through 22] cover the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of the following equipment, associated parts, and hoistways:

(a) hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:

(i) elevators; and

(ii) platform lifts and stairway chair lifts;

(b) power driven stairways and walkways for carrying persons between landings, including but not limited to:

- (i) escalators; and
- (ii) moving walks;

(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car, including but not limited to:

- (i) dumbwaiters; and
- (ii) material lifts and dumbwaiters with automatic transfer devices; and

(d) automatic guided transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.

(2) The department shall adopt rules designating equipment that is not subject to the provisions of [sections 15 through 22], including but not limited to certain types of:

- (a) personnel hoists;
- (b) material hoists;
- (c) manlifts;
- (d) mobile scaffolds, towers, and platforms;
- (e) powered platforms and equipment for exterior and interior maintenance;
- (f) conveyors and related equipment;
- (g) cranes, derricks, hoists, hooks, jacks and slings;
- (h) industrial trucks;

(i) portable equipment, except for portable escalators that are covered by [sections 15 through 22];

(j) tiering or piling machines used to move materials to and from storage that are located and operating entirely within one story;

(k) equipment for feeding or positioning materials at machine tools, printing presses, and similar locations;

(l) furnace hoists;

(m) railroad car lifts or dumpers; and

(n) moving platforms and similar equipment used by an elevator contractor for installing an elevator.

(3) [Sections 15 through 22] do not apply to private residences or farm and ranch operations.

Section 16. Authority of department — rulemaking. (1) The department may consult with engineering authorities and organizations concerned with safety codes, rules, and regulations governing the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of [sections 15 through 22].

(2) (a) The department shall adopt rules relating to the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of elevators, dumbwaiters, escalators, and other equipment subject to the provisions of [sections 15 through 22].

(b) The department may adopt by reference national standards for equipment subject to the provisions of [sections 15 through 22], including national safety codes for elevators and escalators, safety standards for platform lifts and stairway chairs, safety codes for existing elevators and escalators, and standards for automated people movers.

(3) The department may modify or grant exceptions to any provision of [sections 15 through 22] or any rule or standard adopted pursuant to [sections 15 through 22] if to do so would not jeopardize the public safety or welfare.

Section 17. Registration of elevators and other conveyances. (1) Within 6 months of [the effective date of this section], the owners or lessees of existing elevators, dumbwaiters, escalators, or other equipment subject to the provisions of [sections 15 through 22] shall register the equipment with the department on a form provided by the department unless the equipment was previously registered with the department.

(2) The registration form must contain the type, load and speed, name of manufacturer, location, use, and any other information the department may require for each elevator, dumbwaiter, escalator, or other equipment subject to the provisions of [sections 15 through 22] that is registered pursuant to this section.

(3) Each elevator, dumbwaiter, escalator, or other equipment subject to the provisions of [sections 15 through 22] whose construction is completed subsequent to the 6-month period referred to in subsection (1) must be registered by the owner or lessee when the construction is complete.

Section 18. Permits. (1) (a) An elevator contractor may not erect, construct, install, or alter an elevator, dumbwaiter, escalator, or other equipment subject to the provisions of [sections 15 through 22] unless the elevator contractor has obtained a permit from the department and paid the requisite permit fees.

(b) Only a licensed elevator contractor may perform the work described in subsection (1)(a).

(2) Each permit application must be accompanied by copies of specifications and accurately scaled and fully dimensioned plans that:

(a) show the location of the installation in relation to the plans and elevation of the building;

(b) show the location of the machinery room and the equipment to be installed, relocated, or altered;

(c) show all structural supporting members, including foundations;

(d) specify all materials to be employed and all loads to be supported or conveyed; and

(e) are sufficiently complete to illustrate all details of construction and design.

(3) The department may by rule establish criteria for revoking a permit, including but not limited to materially false statements or misrepresentations made in conjunction with a permit application, an elevator contractor's failure to perform in accordance with the specifications or plans submitted with the application or with conditions of the permit, or the elevator contractor's failure to comply with a department stop-work order.

(4) A permit issued under this section expires:

(a) 6 months from the date of its issuance unless the permit specifies a shorter expiration period; or

(b) if an elevator contractor suspends or abandons work covered by a permit for 60 days unless the permit specifies a shorter expiration period for suspension or abandonment.

Section 19. Inspections — fees — exception. (1) Except as provided in subsection (2), all elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22], including freight elevators, must be inspected by the department to ensure compliance with the requirements of the applicable building code and [sections 15 through 22]. The department shall establish and charge a reasonable fee based on the type of equipment being inspected that may not exceed the expense of providing the inspection. Inspections must be made on an annual basis, except that freight elevator inspections must be conducted every 2 years.

(2) (a) In lieu of an inspection by the department, inspections of equipment provided for in subsection (1) may be made by a licensed elevator inspector.

(b) When an inspection is made by an elevator inspector, a copy of the condition report must be provided to the owner and a copy must be sent to the department. The department may not charge more than \$10 for receiving and processing a condition report for each individual piece of equipment in a building and for issuing a certificate of inspection for the piece of equipment if the licensed elevator inspector doing the inspection certifies to the department that there are not any deficient conditions or that all deficient conditions noted in the condition report have been corrected and that a followup inspection by the department is not necessary.

(3) It is the responsibility of the owner or lessee of equipment subject to the provisions of this section to ensure compliance with any inspection requirements.

Section 20. Testing. (1) The department shall establish by rule requirements for periodic testing of elevators, escalators, dumbwaiters, and other equipment subject to the provisions of [sections 15 through 22]. It is the responsibility of the owners or lessees of equipment subject to the provisions of this section to ensure compliance with any testing requirements.

(2) An owner or lessee shall obtain the services of a licensed elevator contractor for testing and all tests must be conducted by a licensed elevator mechanic.

Section 21. Insurance requirements. (1) Each licensed elevator contractor and licensed elevator inspector shall provide the department with a certified copy of an insurance policy issued by an insurance company authorized to do business in this state that provides at least \$1 million coverage for injury or death for any number of persons in any single occurrence and \$500,000 for property damage in any single occurrence.

(2) A licensed elevator contractor or licensed elevator inspector shall notify the department of any material policy alteration or policy cancellation within 10 days of receiving notice of the alteration or cancellation.

Section 22. Violation a misdemeanor — injunction. (1) Any person taking part or assisting in the design, construction, alteration, operation, maintenance, repair, inspection, installation, or testing of elevators, escalators, dumbwaiters, or other equipment subject to the provisions of [sections 15 through 22] who knowingly violates any provision of [sections 15 through 22],

the applicable building code, or any lawful order of a state, county, or municipal building official is guilty of a misdemeanor.

(2) A violation described in subsection (1) may be enjoined by a district court judge in the judicial district where the violation occurs.

(3) Subsection (2) is governed by the Montana Rules of Civil Procedure.

Section 23. Section 50-60-115, MCA, is amended to read:

“50-60-115. Building codes council — purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by counties, cities, or towns. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of ~~11~~ 12 members appointed by the governor, unless otherwise specified, as follows:

- (a) a practicing architect licensed in Montana;
- (b) a practicing professional engineer licensed in Montana;
- (c) a representative from the building contractor industry;
- (d) a county, city, or town building inspector;
- (e) a representative of the manufactured housing industry;
- (f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;
- (g) the director of the department of health and human services or the director's designee;
- (h) a licensed electrician selected by the board of electricians;
- (i) a licensed plumber selected by the board of plumbers;
- (j) *a licensed elevator mechanic selected by the department;*
- ~~(k)~~ (k) the state fire marshal or the fire marshal's designee; and
- ~~(l)~~ (l) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

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

(5) The council and its members are entitled to compensation as provided in 2-15-122.”

Section 24. Repealer. Sections 50-60-701, 50-60-702, and 50-60-703, MCA, are repealed.

Section 25. Codification instruction. (1) [Sections 1 through 14] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 14].

(2) [Sections 15 through 22] are intended to be codified as an integral part of Title 50, chapter 60, and the provisions of Title 50, chapter 60, apply to [sections 15 through 22].

Section 26. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2005.

(2) [Section 23] is effective January 1, 2006.

Approved April 19, 2005

CHAPTER NO. 304

[SB 433]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH A PILOT PROGRAM FOR THE USE OF MEDICAID FUNDS NOT EXPENDED FOR THE PROVISION OF BASIC HEALTH AND SAFETY SERVICES BY INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; REQUIRING THE DEPARTMENT TO ESTABLISH INDIVIDUAL ACCOUNTS FOR CERTAIN PERSONS WITH DEVELOPMENTAL DISABILITIES; LIMITING THE PURPOSES FOR WHICH THE FUNDS IN THE ACCOUNTS MAY BE USED; REQUIRING THE DEPARTMENT TO MONITOR THE USE OF THE ACCOUNTS; REQUIRING A REPORT TO THE LEGISLATURE; AUTHORIZING THE DEPARTMENT TO ADOPT RULES FOR PURPOSES OF THE PILOT PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Department to establish pilot program — use of allocated funds — report required — rulemaking. (1) The department shall establish a pilot program for individuals with developmental disabilities. The pilot program must be limited to those individuals in a community-based program for which the department receives medicaid funding pursuant to a waiver from the federal government under the provisions of section 1915(c) of the Social Security Act, 42 U.S.C. 1396n(c). The purpose of the pilot program is to test the feasibility of the receipt and use of medicaid funding not expended by the individuals for their basic health and safety services needs by individuals with developmental disabilities for services in addition to or to reinforce those necessary for basic health and safety.

(2) As part of the pilot program, the department shall identify and allocate to each individual with a developmental disability, as defined in 53-20-102, chosen for the pilot program general fund money to be used for the care of the individual. The individual may choose to place up to one-half of the money not needed by the individual for basic health and safety services in an individual waiver account established by the department.

(3) Money allocated in an individual waiver account may be used by the individual with a developmental disability for whom the account is established only for the purchase of one or more additional waiver services not needed for the basic health and safety of the individual or to reinforce basic health and safety services. Those additional or other services must be determined by the individual, the individual's case manager, and the individual's guardian, if a guardian has been appointed.

(4) If the person with a developmental disability for whom an account is established dies or changes residency to another place outside of Montana, money remaining in the account is within the sole control of the department.

(5) In establishing and conducting the pilot program, the department may determine conditions and operating features of the pilot program necessary for the success of the program. The pilot program may be used for no more than 50 persons with developmental disabilities, as selected by the department.

(6) The department shall monitor the use of the individual waiver accounts and provide a report to the legislature on the feasibility and desirability of establishing accounts for other persons with developmental disabilities cared for in a community-based program. The report must be made to the legislature as provided in 5-11-210.

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

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Termination. [This act] terminates January 1, 2011.

Approved April 19, 2005

CHAPTER NO. 305

[SB 491]

AN ACT GENERALLY REVISING BENEFITS AND DEFINITIONS IN THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; CHANGING HOW AVERAGE SALARIES ARE CALCULATED TO DETERMINE BENEFIT AMOUNTS; AMENDING SECTIONS 19-13-104, 19-13-704, 19-13-803, AND 19-13-902, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, ~~excluding~~ *excluding* overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, ~~excluding~~ *excluding* overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) ~~overtime, overtime~~, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201.

~~(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active 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 annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of final average compensation.~~

~~(6)~~(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

~~(7)~~(6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106.

(7) "*Highest average compensation*" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member ~~becomes reaches~~ both ~~age~~ 50 years of age or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 2. Section 19-13-704, MCA, is amended to read:

“19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member’s ~~final~~ *highest* average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of membership service, a benefit equal to 2% of the member’s ~~final~~ *highest* monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of membership service, a benefit equal to 50% of the member’s ~~final~~ *highest* monthly compensation plus 2% of the member’s ~~final~~ *highest* monthly compensation for each year of service over 20 years.

(3) Upon a retired member’s death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104.”

Section 3. Section 19-13-803, MCA, is amended to read:

“19-13-803. Amount of disability retirement benefit. (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member’s ~~final~~ *highest* average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member’s ~~final~~ *highest* average compensation for each year of service credit.

(2) Upon the death of a member receiving a disability retirement benefit under this section, the member’s surviving spouse or dependent child is eligible for benefits as provided in 19-13-104.”

Section 4. Section 19-13-902, MCA, is amended to read:

“19-13-902. Survivorship benefit. (1) A member’s surviving spouse, if there is one, must receive a survivorship benefit amount as provided in this section. If a member leaves no surviving spouse or upon the death of the surviving spouse, the member’s surviving dependent children must collectively receive the same benefit that a surviving spouse would have received under this section. A child may receive a share of the benefit as long as the child is a dependent child, as defined in 19-13-104.

(2) (a) The survivorship benefit paid upon the death of an active member who has completed less than 20 years of membership service is one-half the ~~final~~ *highest* average compensation received by the member.

(b) The survivorship benefit paid upon the death of an active or inactive member who has completed over 20 years of membership service is the benefit amount to which the member was entitled on the date of death.

(3) Benefits provided under this section are subject to the benefit adjustments provided pursuant to part 10 of this chapter.”

Section 5. Effective date. [This act] is effective July 1, 2005.

Section 6. Applicability. [This act] applies to benefits calculated on or after [the effective date of this act].

Approved April 19, 2005

CHAPTER NO. 306

[HB 396]

AN ACT ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED ASTHMA MEDICATION; PROVIDING DEFINITIONS; REQUIRING DOCUMENTATION; PROVIDING FOR NOTICE TO THE PARENTS OR GUARDIANS THAT THE SCHOOL DISTRICT MAY NOT INCUR LIABILITY FOR ANY INJURY ARISING OUT OF THE SELF-ADMINISTRATION OF MEDICATION UNLESS THE ACT OR OMISSION IS THE RESULT OF GROSS NEGLIGENCE, WILLFUL AND WANTON CONDUCT, OR AN INTENTIONAL TORT; PROVIDING AN EXEMPTION FOR YOUTH CORRECTIONAL FACILITIES; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Self-administration of asthma medication. (1) As used in this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant-certified who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil's physician, physician assistant-certified, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant-certified, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

- (a) while in school;
- (b) while at a school-sponsored activity;
- (c) while under the supervision of school personnel;
- (d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or
- (e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent or guardian and in accordance with documents provided by the pupil's physician, physician assistant-certified, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 5, part 4, and the provisions of Title 20, chapter 5, part 4, apply to [section 1].

Section 3. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 20, 2005

CHAPTER NO. 307

[HB 6]

AN ACT REVISING AND IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE RENEWABLE RESOURCE GRANT ACCOUNT; TEMPORARILY REVISING THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

Section 1. Appropriations from renewable resource grant and loan program state special revenue account. (1) There is appropriated from the renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation up to:

(a) \$100,000 to be used for emergency projects; and

(b) \$300,000 to be used for planning grants to be awarded by the department over the course of the biennium.

(2) There is appropriated from the renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation \$4.6 million that is available in the renewable resource state special revenue account for grants to political subdivisions and local governments during the 2005 biennium. The funds in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2005 report to the 59th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. Any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Milk River Joint Board of Control	
(Halls Coulee Siphon Repair)	\$100,000
Spring Meadows—Missoula County Water District	
(Drinking Water Project)	\$100,000

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Montana State University	(Four Corners Surface and Ground Water Study)	\$99,618
Beaverhead Conservation District	(Spring Creek Restoration)	\$100,000
St. Ignatius, Town of	(Wastewater Improvement Project)	\$100,000
Montana Department of Natural Resources and Conservation	(Deadman's Basin Supply Canal Rehabilitation Project)	\$100,000
Jefferson Valley Conservation District	(Jefferson River Restoration)	\$95,469
Carter—Chouteau County Water and Sewer District	(Drinking Water Project)	\$100,000
Sheridan, Town of	(Drinking Water Project)	\$100,000
Lower Yellowstone Irrigation District	(Lower Yellowstone Canal)	\$100,000
Montana Department of Natural Resources and Conservation	(Frenchman Dam Rehabilitation Study)	\$100,000
Montana Department of Natural Resources and Conservation	(Martinsdale North Dam Riprap Program)	\$100,000
Seeley Lake Sewer District	(Wastewater Improvement Project)	\$100,000
Upper/Lower River Road Water and Sewer District	(Drinking Water and Wastewater Project)	\$100,000
Buffalo Rapids Irrigation District	(Canal Automation)	\$88,955
Choteau, City of	(Drinking Water Project)	\$100,000
Dodson, Town of	(Wastewater System Improvements)	\$100,000
Gallatin County	(Floodplain Delineation Project)	\$100,000
Yellowstone Irrigation District	(Flow Measurement Project)	\$100,000
Gardiner—Park County Water District	(Drinking Water Project)	\$100,000
Liberty County Conservation District	(Chester Sprinkler Irrigation Project)	\$100,000

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	Cascade, Town of (Drinking Water Project)	\$100,000
	Ranch County Water and Sewer District (Drinking Water Project)	\$100,000
	Libby, City of (Wastewater Improvement Project)	\$100,000
	Broadview, Town of (Broadview Water Supply Study)	\$99,997
	Montana Department of Natural Resources and Conservation (Martinsdale Outlet Canal Drop Structures)	\$100,000
	Roosevelt County Conservation District (Fort Peck Irrigation Quality and Quantity Phase I)	\$99,995
	Buffalo Rapids Irrigation District (Improving Efficiency and Quality)	\$100,000
	Paradise Valley Irrigation District (Turnout Replacement Project)	\$100,000
	Manhattan, Town of (Wastewater Improvement Project)	\$100,000
	Woods Bay Homesites County Water and Sewer District (Water System Improvements)	\$100,000
	Custer Area, Yellowstone County Water and Sewer District (Wastewater Improvement Project)	\$100,000
	Fort Belknap Irrigation District (Sugar Factory Lateral Project Phase II)	\$100,000
	Laurel, City of (Wastewater Improvement Project)	\$100,000
	Yellowstone Conservation District (Canyon Creek Restoration)	\$100,000
	Valier, Town of (Wastewater Improvement Project)	\$100,000
	Fairfield, Town of (Wastewater Improvement Project)	\$100,000
	Glasgow Irrigation District (Vandalia Dam Improvements Phase III)	\$100,000
	Ennis, Town of (Wastewater Improvement Project)	\$100,000
	Bighorn Conservation District (Alluvial Aquifers of Northern Bighorn County)	\$100,000

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Savage Irrigation District		
(Rehabilitation Planning Study)		\$62,814
Butte-Silver Bow		
(Big Hole River Transmission Line Replacement)		\$100,000
Whitefish, City of		
(Drinking Water Project)		\$100,000
Circle, Town of		
(Wastewater Improvement Project)		\$100,000
Black Eagle Water and Sewer District		
(Drinking Water Project)		\$50,000
Lewis and Clark Conservation District		
(Florence Canal Rehabilitation Project)		\$100,000
Livingston, City of		
(Livingston Flood Damage Reduction Study)		\$100,000
Missoula County		
(Grant Creek Restoration and Flood Mitigation)		\$100,000
Liberty County Conservation District		
(Marias Baseline Development Project)		\$100,000
Hammond Irrigation District		
(Porcupine Creek Siphon Rehabilitation)		\$38,200
Bear Creek, Town of		
(Drinking Water Project)		\$100,000
Ryegate, Town of		
(Wastewater System Improvements)		\$100,000
Sun Prairie Village County Water and Sewer District		
(Drinking Water Project)		\$100,000
Butte-Silver Bow		
(Water Master Plan)		\$100,000
Montana Department of Natural Resources and Conservation		
(Increasing Montana Water Management Capacity)		\$99,714
Milk River Joint Board of Control		
(Lake Sherburne Dam Outlet Works Rehabilitation)		\$100,000
Bigfork—Flathead County Water and Sewer District		
(Wastewater System Improvements)		\$100,000
Ruby Valley Conservation District		
(Ground Water Management Plan)		\$33,694
Cartersville Irrigation District		
(Sand Creek Siphon Rehabilitation Project)		\$100,000

(4) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2007 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 59th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 59th legislature for the 2007 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior biennia are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan program state special revenue account.

Section 5. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 6. Fund transfer. At the beginning of fiscal year 2007, the amount of \$600,000 is transferred from the state general fund to the renewable resource grant and loan program state special revenue account established in 85-1-604 for the purpose of making grants.

Section 7. Section 85-1-604, MCA, is amended to read:

“85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(c) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for:

(a) grants for designated projects *and the activities authorized in 85-1-602(1)(a)*; and

(b) administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of the grant and loan program. The expenses under this subsection (3)(b) may be funded before funding of projects.

(4) *For the biennium beginning July 1, 2005, appropriations may be made from the renewable resource grant and loan program state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs.”*

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. 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 band of Chippewa.

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2005.

Section 11. Termination. [Section 7(4)] terminates June 30, 2007.

Approved April 21, 2005

CHAPTER NO. 308

[HB 7]

AN ACT PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; TEMPORARILY AUTHORIZING ADDITIONAL USES OF THE RECLAMATION AND DEVELOPMENT GRANTS STATE SPECIAL REVENUE ACCOUNT; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; TRANSFERRING FUNDS; TEMPORARILY REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND TERMINATION DATES.

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

Section 1. Appropriations for reclamation and development grants.

(1) The amount of \$4.9 million is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account established in 90-2-1104 from funds allocated for the purpose of making grants from the interest income of the resource indemnity trust fund as set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 5].

Section 2. Approved grants and projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would not otherwise receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 59th legislature for the 2007 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Montana Board of Oil and Gas Conservation (2005 Eastern District Orphaned Well Plug and Abandonment)	\$300,000
Montana Board of Oil and Gas Conservation (2005 Northern District Orphaned Well Plug and Abandonment)	\$300,000
Montana Department of Environmental Quality (Bluebird Mine Reclamation)	\$300,000

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Montana Department of Environmental Quality		
(Frohner Mine Reclamation)		\$300,000
Montana Department of Environmental Quality		
(Buckeye Mine and Millsite Reclamation)		\$300,000
Lewistown, City of		
(Reclamation of Brewery Flats on Big Spring Creek)		\$300,000
Montana Department of Natural Resources and Conservation		
(St. Mary Studies and Design)		\$900,000
Butte-Silver Bow Local Government		
(Belmont Shaft Failure and Subsidence Mitigation)		\$300,000
Pondera County		
(Oil and Gas Well Plug and Abandonment)		\$100,000
Custer County Conservation District		
(Yellowstone River Resource Conservation Project)		\$299,965
Teton County		
(Oil and Gas Well Plug and Abandonment)		\$50,000
Toole County		
(Plugging and Abandonment Aid to Small Oil Operators)		\$150,000
Montana Department of Environmental Quality		
(Zortman Mine—Completion of Reclamation Alternative Z6)		\$300,000
Butte-Silver Bow Local Government		
(Excelsior Reclamation)		\$129,800
Powell County		
(Wetland Reclamation and Redevelopment)		\$240,850
Montana Department of Environmental Quality		
(MTS Tire Recyclers Cleanup)		\$300,000
Montana Department of Environmental Quality		
(Former Harlem Equity Co-Op Bulk Plant)		\$285,572

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2007 biennium pursuant to 17-7-302.

Section 3. Coordination of fund sources for grants program projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 4. Condition of grants. Disbursement of grant funds under [sections 1 through 5] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2007 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 4] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Fund transfers. On July 1, 2005, there is transferred from the reclamation and development grants special revenue account established in 90-2-1104:

(1) \$57,115.94 to the environmental contingency account established in 75-1-1101; and

(2) \$400,000 to the renewable resource grant and loan program state special revenue account created in 85-1-604.

Section 7. Section 90-2-1104, MCA, is amended to read:

“90-2-1104. Reclamation and development grants account. (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under provisions of 15-38-106;

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(d); and

(d) the oil and gas production tax as provided in 15-36-331.

(3) ~~Appropriations~~ *After the fund transfers in [section 6] are made, appropriations* may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including salaries and expenses for personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded before funding of projects.

(4) *For the biennium beginning July 1, 2005, appropriations may be made from the reclamation and development grants special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs.”*

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2005.

Section 10. Termination. (1) [Section 7(3)] terminates July 30, 2005.

(2) [Section 7(4)] terminates June 30, 2007.

Approved April 21, 2005

CHAPTER NO. 309

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 58TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsection (2) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan

Amount

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Deadman's Basin Supply Canal Rehabilitation Project	55,000
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Martinsdale North Dam Riprap Project	90,000
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CARTERSVILLE IRRIGATION DISTRICT

Sand Creek Siphon Rehabilitation Project	40,000
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Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the following renewable resource projects that were approved by the 58th legislature in Chapter 297, Laws of 2003, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2005. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) through (4) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan	Amount
LOCKWOOD WATER AND SEWER DISTRICT	
Wastewater Collection and Treatment Works	3,300,000

(3) GROUP B: The interest rate for the projects in this group will be 4.5% on the first \$250,000 and 2.25% on the next increment of the loan up to \$500,000. The department of natural resources and conservation will then determine an average rate for the full term of the loan, which may be up to 20 years.

Loan	Amount
LOWER WILLOW CREEK DRAINAGE DISTRICT	
Lower Willow Creek Dam Rehabilitation	295,000

(4) GROUP C: The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
MILL CREEK IRRIGATION DISTRICT	
Mill Lake Dam Rehabilitation	572,000

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
North Fork of the Smith River Dam Rehabilitation	557,000

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed \$7,236,264, of which \$4,909,000 is to be used to finance the projects approved in [sections 1 and 2], \$1,669,422 is to be used to finance additional loans in lieu of grants listed in House Bill No. 6, and up to \$657,842 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower

interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan program state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Conditions of loans. (1) Disbursement of funds under [sections 1 through 7] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriation established. For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 310

[HB 12]

AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2006 AND 2007; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING THE REQUIREMENT THAT STATE AGENCIES PROVIDE INFORMATION CONCERNING POTENTIAL ENERGY SAVINGS; AMENDING SECTION 90-4-605, 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 ~~work with state agencies to~~ 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) 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 department shall notify the department of administration. Upon receipt of the notification, the department of administration shall implement a design and construction project using bond proceeds 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. Bond authorization — appropriation. (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed \$3.75 million for fiscal years 2006 and 2007 for the projects approved in [section 3] and to fulfill the duties imposed by 90-4-605 and 90-4-607, as provided in [section 4]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill the duties authorized by 90-4-605 and 90-4-607, and to fund the projects approved in [section 3]. For the purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds are appropriated to and must be available to the department of environmental quality and may be used for the purposes authorized in this section without further budgetary authorization.

Section 3. Approval of energy conservation projects. (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves for fiscal years 2006 and 2007 the following energy conservation projects:

(a) Mitchell building, phase II and capitol energy projects, department of administration, Helena, Montana;

(b) Miles City headquarters building, department of fish, wildlife and parks, Miles City, Montana;

(c) Pershing and Brockman halls, Montana state university-northern, Havre, Montana;

(d) petroleum building, Montana tech of the university of Montana, Butte, Montana;

(e) Montana mental health and nursing care center, phase II boiler upgrade project, department of public health and human services, Lewistown, Montana;

(f) boiler replacements in academic support center, McMullen hall, Montana state university-Billings, Billings, Montana;

(g) high side kitchen ventilation, men's prison, department of corrections, Deer Lodge, Montana;

(h) health sciences phase II ground water cooling and heating, ventilation, and air conditioning improvements, university of Montana-Missoula, Missoula, Montana;

(i) irrigation and Aspen hall, Montana school for the deaf and blind, Great Falls, Montana;

(j) boiler replacement, women's prison, department of corrections, Billings, Montana; and

(k) wood-fired boiler, university of Montana-western, Dillon, Montana.

(2) In addition to the energy conservation projects referred to in subsection (1), the department of environmental quality may expend funds appropriated under [section 4] to respond to energy saving opportunities. Energy saving opportunities include coordination of energy improvement projects with the long-range building program capital improvement projects.

(3) For purposes of this section, "energy saving opportunities" means opportunities to improve energy use that will provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 2], the department of environmental quality may fund projects that would be proposed as part of the state building energy conservation package for fiscal years 2008 and 2009.

Section 4. Appropriation of bond proceeds. The amount of \$400,000 is appropriated from bond proceeds authorized by Chapter 50, Laws of 1999, Chapter 240, Laws of 2001, Chapter 497, Laws of 2003, and [section 2] to the department of environmental quality in order to fulfill its duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation for the 2007 biennium only.

Section 5. Two-thirds vote required. Because [section 2] 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 enactment of [section 2].

Section 6. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 311

[HB 30]

AN ACT CLARIFYING THAT LEGISLATORS-ELECT ARE ENTITLED TO COMPENSATION AND EXPENSES FOR AUTHORIZED PRESESSION ACTIVITY; AMENDING SECTION 5-2-203, 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 5-2-203, MCA, is amended to read:

"5-2-203. Compensation and expenses — definition. (1) Members of the legislature attending the pre-session caucus, provided for in 5-2-201, and

legislative orientation and training are entitled to receive compensation and expenses as provided in 5-2-302. *The legislative services division shall place the members on the payroll roster, provided for in 2-18-404, in order to pay the compensation and expenses.*

(2) While engaged in pre-session business, members nominated to serve as officers of the legislature and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.

(3) *As used in this section:*

(a) *“holdover senator” means a senator who was not required to seek election at the general election held immediately prior to the pre-session caucus; and*

(b) *“member” means a holdover senator, senator-elect, or representative-elect who is eligible to serve in the ensuing legislative session.”*

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 November 2, 2004.

Approved April 21, 2005

CHAPTER NO. 312

[HB 40]

AN ACT EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-8-231, MCA, is amended to read:

“17-8-231. Liability for false claims, records, or statements. (1) (a) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to ~~any~~ a state agency or its contractors forfeits the claim, including any portion that may be legitimate, and ~~in addition~~ is subject to a *civil* penalty of not to exceed \$2,000 plus double the amount of damages sustained by the state as a result of the false claim; ~~including all legal costs.~~ *The court shall also award expenses, costs, and attorney fees.*

(b) *A person who knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to a state agency or its contractors is subject to a civil penalty of not to exceed \$2,000 plus double the amount of damages sustained by the state as a result of the false record or statement. The court shall also award expenses, costs, and attorney fees.*

(2) *This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.*

~~(2)(3)~~ *The A forfeiture and the penalty may be sued for in the same suit.”*

Section 2. Section 45-7-210, MCA, is amended to read:

“45-7-210. False claims claim to public agencies agency. (1) A person commits an offense under this section if the person ~~purposely and knowingly~~ presents for allowance, or for payment ~~any, or for the purpose of concealing, avoiding, or decreasing an obligation to pay~~ a false or fraudulent claim, bill, account, voucher, or writing to ~~any~~ a public agency, public servant, or contractor authorized to allow or pay *valid* claims presented to a public ~~agencies if genuine~~ agency.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If a false or fraudulent ~~claims are~~ claim is knowingly submitted ~~purposely and knowingly~~ as part of a common scheme or if the value of the claim or the aggregate value of ~~all one or more~~ claims exceeds \$1,000, a person convicted of an offense under this section shall be fined not to exceed \$10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.”

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

Approved April 21, 2005

CHAPTER NO. 313

[HB 49]

AN ACT GENERALLY REVISING THE LAW REQUIRING THE REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; AMENDING THE DEFINITION OF “SEXUAL OFFENSE”; CHANGING WITH WHOM AN OFFENDER MUST REGISTER; CLARIFYING THE PROCEDURE FOR NOTICE OF A CHANGE OF AN OFFENDER’S ADDRESS; CHANGING THE PROCEDURE FOR PETITIONING FOR RELIEF FROM REGISTRATION AFTER 10 YEARS; ALLOWING AN OFFENDER CONVICTED IN ANOTHER JURISDICTION TO BE GIVEN THE RISK LEVEL DESIGNATION ASSIGNED BY THAT JURISDICTION; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, AND 46-23-509, MCA.

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

Section 1. Section 46-23-502, MCA, is amended to read:

“46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) “Department” means the department of corrections provided for in 2-15-2301.

(2) “Mental abnormality” means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) “Personality disorder” means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) “Predatory sexual offense” means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state or the federal government *that is* reasonably equivalent to a violation listed in subsection (6)(a) *or for which the offender was required to register as a sex offender after conviction.*

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register — procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) *or (1)(c)* must be with the probation office having supervision over the offender. ~~Registration under subsection (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever person an law enforcement official the offender registers with under subsection (1)(c) shall notify the other person official of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate law enforcement agency.~~

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice.

(4) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; and

(ii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509.

(b) The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of address — duty to inform — forwarding of information. If an offender required to register under this part ~~changes residence~~ *has a change of address*, the offender shall within 10 days of the change give written notification of the new address to the agency with whom the offender last registered *or, if the offender was initially registered under 46-23-504(1)(b), to the department and to the chief of police of the municipality or sheriff of the county from which the offender is moving.* The agency *or department* shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new ~~place of residence~~ *address* and to the chief of police of the municipality of the new ~~place of residence~~ *address* if the new ~~place of residence~~ *address* is in a municipality."

Section 4. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, *but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a);* or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of

the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) *An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).*

(b) Except as provided in subsection (5), at any time after 10 years of registration, ~~the~~ *an offender required to register for life* may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

~~(a)~~(i) the offender has remained a law-abiding citizen; and

~~(b)~~(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding *under subsection (3)(b)* is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations — rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

- (a) level 1, the risk of a repeat sexual offense is low;
- (b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) *If an offense is covered by 46-23-502(6)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.*

Approved April 21, 2005

CHAPTER NO. 314

[HB 53]

AN ACT PROVIDING THAT CERTAIN FUNDS COLLECTED BY OR ON BEHALF OF THE BOARD OF HORSERACING BE DEPOSITED IN A STATE SPECIAL REVENUE ACCOUNT; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 23-4-105, 23-4-202, 23-4-204, 23-4-302, AND 23-4-304, MCA; AND PROVIDING A DELAYED 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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)”

Section 2. Section 23-4-105, MCA, is amended to read:

“23-4-105. Authority of board. The board shall, subject to 37-1-101 and 37-1-121, license and regulate racing and review race meets held in this state under this chapter. All percentages withheld from amounts wagered must be deposited in the board's agency fund a state special revenue account and are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently engaged authorized in

Montana, it shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board should consider both the economic and safety impacts on the existing racing and breeding industry.”

Section 3. Section 23-4-202, MCA, is amended to read:

“23-4-202. Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board’s authorization, the board of stewards of a race meet at which ~~they~~ *the stewards* officiate may exclude from racecourses ~~in this state~~ a person whom the board *or board of stewards* considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may ~~forbid~~ *prohibit* application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards’ rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in ~~the board’s agency fund~~ *a state special revenue* account and *statutorily appropriated to the board as provided in 17-7-502*. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; and

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.”

Section 4. Section 23-4-204, MCA, is amended to read:

“23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet must be limited to horses bred in this state unless, in the board’s judgment, there is an insufficient number of Montana-bred horses for the race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead. Races with exclusively Montana-bred horses must be run for 20% higher purses than races in comparable conditions that are not run with exclusively Montana-bred horses.

(2) The licensee conducting the race meet shall pay a sum equal to 10% of the first money of every purse won by a horse bred in this state to the breeder of the horse within 30 days of the end of the race meet. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(3) Three percent of exotic wagering on a simulcast race must be deposited in ~~the board’s agency fund account~~ *a state special revenue account. Those funds are statutorily appropriated to the board as provided in 17-7-502.* The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.”

Section 5. Section 23-4-302, MCA, is amended to read:

“23-4-302. Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as “breakage”.

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as “breakage”.

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in ~~the board’s agency fund~~ *a state special revenue account. The funds deposited are statutorily appropriated to the board as provided in 17-7-502.* The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.”

Section 6. Section 23-4-304, MCA, is amended to read:

“23-4-304. Gross receipts — department’s percentage — collection and allocation. (1) (a) The licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day’s parimutuel betting at each race meet. At the end of each race meet the licensee

shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in ~~the board's agency fund~~ *a state special revenue* account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in ~~the board's agency fund~~ *a state special revenue* account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through ~~the board's agency fund~~ *a state special revenue* account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

(3) *The funds collected under this section and deposited in a state special revenue account are statutorily appropriated to the board as provided in 17-7-502."*

Section 7. Effective date. [This act] is effective July 1, 2007.

Approved April 21, 2005

CHAPTER NO. 315

[HB 55]

AN ACT REQUIRING PERMANENT REGISTRATION OF TRAILER AND SEMITRAILER FLEETS; ESTABLISHING A PERMANENT REGISTRATION FEE; REQUIRING SURRENDER TO THE DEPARTMENT OF TRANSPORTATION OF THE REGISTRATION AND LICENSE PLATE OF A TRAILER OR SEMITRAILER THAT IS REMOVED FROM A FLEET; AMENDING SECTION 61-3-721, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-3-721, MCA, is amended to read:

“61-3-721. Proportional registration of fleet vehicles, registration periods, application, fee formula, and payment — permanent registration of trailer and semitrailer fleets — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to vehicle registration that is required by the department of transportation.

(2) Each fleet subject to the provisions of 61-3-711 through 61-3-733 must, except as provided in 61-3-318(1) and subsection (6) of this section, be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, “calendar quarter” means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 31.....1st period
- (b) April 1 through June 30.....2nd period
- (c) July 1 through September 303rd period
- (d) October 1 through December 314th period

(4) Registration of a fleet of apportionable vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

- (a) dividing in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;
- (b) determining the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;
- (c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) ~~(a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.~~

~~(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.~~

~~(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.~~

~~(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.~~

~~(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.~~

~~(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.~~

~~(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.~~

~~(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.~~

~~(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate. Upon renewal or new registration, each trailer or semitrailer fleet must be permanently registered and assessed a registration fee equal to five times the amount required in 61-3-321(1)(j). Each trailer and semitrailer in the fleet must be issued a permanent license plate and sticker.~~

~~(7) The fee assessed in subsection (6) is a one-time fee except upon transfer of ownership of a trailer or semitrailer.~~

~~(8) If the owner of a fleet removes a trailer or semitrailer from the fleet, the owner shall surrender the registration and license plate assigned to the trailer or semitrailer to the department of transportation. The owner may not transfer the license plate and sticker to a trailer or semitrailer that is added to the fleet.~~

~~(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.~~

~~(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."~~

Section 2. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then 61-3-721 must be amended as follows:

"61-3-721. Proportional registration of motor fleet vehicles, registration periods, application, fee formula, and payment — permanent registration of trailer and semitrailer fleets — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to *motor vehicle, trailer, semitrailer, or pole trailer* registration that is required by the department of transportation.

(2) ~~Each~~ Except as provided in 61-3-318(1) and subsection (6) of this section, each fleet subject to the provisions of 61-3-711 through 61-3-733 must, ~~except as provided in 61-3-318(1) and subsection (6) of this section,~~ be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

- (a) January 1 through March 311st period
- (b) April 1 through June 302nd period
- (c) July 1 through September 303rd period
- (d) October 1 through December 314th period

(4) Registration of a fleet of apportionable *motor* vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable *motor* vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement, *arrangement*, or *declaration* entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each *motor* vehicle, *trailer*, *semitrailer*, or *pole trailer* in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

~~(6) (a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.~~

~~(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.~~

~~(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.~~

~~(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.~~

~~(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.~~

~~(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with~~

~~the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.~~

~~(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.~~

~~(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.~~

~~(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate. Upon renewal or new registration, each trailer, semitrailer, or pole trailer fleet must be permanently registered and assessed a registration fee of \$82.50. Each trailer, semitrailer, or pole trailer in the fleet must be issued a permanent license plate and sticker.~~

~~(7) The fee assessed in subsection (6) is a one-time fee except upon transfer of ownership of a trailer, semitrailer, or pole trailer.~~

~~(8) If the owner of a fleet removes a trailer, semitrailer, or pole trailer from the fleet, the owner shall surrender the registration and license plate assigned to the trailer, semitrailer, or pole trailer to the department of transportation. The owner may not transfer the license plate and sticker to a trailer, semitrailer, or pole trailer that is added to the fleet.~~

~~(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.~~

~~(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."~~

Section 3. Effective date. [This act] is effective January 1, 2006.

Approved April 21, 2005

CHAPTER NO. 316

[HB 70]

AN ACT EXEMPTING COUNTY COMMISSIONERS OF CERTAIN COUNTIES FROM THE RESTRICTION ON APPOINTMENT OF RELATIVES TO POSITIONS WITHIN THE COUNTY; REQUIRING THE COUNTY COMMISSIONER RELATED TO THE PERSON BEING APPOINTED TO ABSTAIN FROM VOTING ON THE APPOINTMENT; PROVIDING FOR SPECIFIC NOTICE OF THE INTENDED APPOINTMENT; AND AMENDING SECTION 2-2-302, MCA.

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

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

“2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of *2-2-303* and this section ~~and 2-2-303~~ do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days;

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

(e) the employment of election judges; ~~or~~

(f) the employment of pages or temporary session staff by the legislature; *or*

(g) *county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.*

(3) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), ~~the school district trustees shall give~~ written notice of the time and place ~~of their for the intended action. The notice~~ must be published at least 15 days prior to the ~~trustees'~~ intended action in a newspaper of general circulation in the county in which the school district is located *or the county office or position is located.*”

Approved April 21, 2005

CHAPTER NO. 317

[HB 73]

AN ACT AUTHORIZING A COUNTY, CITY, TOWN, OR MUNICIPALITY TO IMPOSE A VOTED LEVY FOR PROGRAMS THAT PREVENT SUBSTANCE ABUSE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Prevention program voted levy. (1) If authorized by the electors, the governing body of a county, city, town, or municipality may establish a fund to create and maintain prevention programs within the geographic boundaries of the governing body by a levy on the taxable property within the county, city, town, or municipality. The tax levy is in addition to all other tax levies. The election to authorize the levy must be conducted as provided in 15-10-425.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine, provided that expenditures must be made solely for the creation, maintenance, and development of prevention programs.

(3) For the purposes of this section, "prevention programs" includes programs that reduce substance abuse.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 21, and the provisions of Title 7, chapter 6, part 21, apply to [section 1].

Section 3. Coordination instruction. If Senate Bill No. 301 and [this act] are both passed and approved, then [this act] is void and [section 7] of Senate Bill No. 301 is amended to read:

"Section 7. County taxation — purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

- (1) district court purposes as provided in 7-6-2511;
- (2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;
- (3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;
- (4) multijurisdictional service purposes as provided in 7-11-1106;
- (5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;
- (6) support for a port authority as provided in 7-14-1132;
- (7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;
- (8) recreational, educational, and other activities of the elderly as provided in 7-16-101;
- (9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, 7-16-2109, and 7-21-3410;
- (10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;
- (11) support for a museum, facility for the arts and the humanities, or collection of exhibits as provided in 7-16-2205;
- (12) extension work in agriculture and home economics as provided in 7-21-3203;
- (13) weed control and management purposes as provided in 7-22-2142;
- (14) insect control programs as provided in 7-22-2306;
- (15) fire control as provided in 7-33-2209;
- (16) ambulance service as provided in 7-34-102;
- (17) public health purposes as provided in 50-2-111 and 50-2-114;
- (18) public assistance purposes as provided in 53-3-115;

- (19) indigent assistance purposes as provided in 53-3-116;
- (20) developmental disabilities facilities as provided in 53-20-208;
- (21) mental health services as provided in 53-21-1010;
- (22) airport and landing field purposes as provided in 67-10-402 and 67-11-302;
- (23) purebred livestock shows and sales as provided in 81-8-504; ~~and~~
- (24) economic development purposes as provided in 90-5-112; *and*
- (25) *prevention programs, including programs that reduce substance abuse.*

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 318

[HB 85]

AN ACT ELIMINATING CERTAIN REQUIREMENTS FOR REPORTING BY THE DEPARTMENT OF REVENUE TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE AND THE LEGISLATURE; AMENDING SECTIONS 15-6-218 AND 15-30-1114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-6-218, MCA, is amended to read:

“15-6-218. Intangible personal property exemption. (1) ~~Except as provided in subsection (3), intangible~~ *Intangible* personal property is exempt from taxation.

(2) For the purposes of this section, “intangible personal property” means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissary notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) ~~The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter.~~

(4) ~~The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property. To the extent that the unit value of centrally assessed property includes intangible personal property, that value must be removed from the unit value according to the provisions in subsection (3).~~

~~(5) The department shall report intangible personal property annually to the revenue and transportation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001."~~

Section 2. Section 15-30-1114, MCA, is amended to read:

"15-30-1114. Review of pass-through entity taxation by department.

~~(1)~~ The department shall review, with the assistance of interested parties, the reporting and taxation of income that is flowing through pass-through entities and the method of reporting and taxation of this income in states other than Montana and shall consider recommendations concerning the methodology that Montana should use to ensure fair and equitable taxation of income that flows through pass-through entities to other entities.

~~(2) The department shall report to the revenue and transportation interim committee at least once each year on the findings and recommendations of the review conducted under subsection (1)."~~

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

Approved April 21, 2005

CHAPTER NO. 319

[HB 89]

AN ACT CHANGING THE REQUIREMENTS OF THE ELECTRONIC VIDEO GAMBLING MACHINE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; DEFINING "ELECTRONICALLY CAPTURED DATA"; ELIMINATING THE TAX CREDIT AND LOAN PROVISIONS FOR MACHINE OWNERS PARTICIPATING IN THE SYSTEM; ELIMINATING THE PLEDGE OF MACHINE TAXES TO GUARANTEE REPAYMENT OF THE LOANS; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; REPEALING SECTION 23-5-638, MCA, AND SECTION 10, CHAPTER 424, LAWS OF 1999; AND PROVIDING AN EFFECTIVE 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) "Available connection date" means the date on which the department begins to accept applications for connection of machines to the automated accounting and reporting system.~~

~~(3)~~(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 in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(4)~~(3) (a) "Draw 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 as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) "*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 in which, by the skill of the player, by chance, or by both, the player may receive free 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) "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."

Section 2. Section 23-5-610, MCA, is amended to read:

~~23-5-610. (Temporary) Video gambling machine gross income tax — credit — records — distribution — quarterly statement and payment.~~ (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

~~(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:~~

~~(i) the permit was active for the video gambling machine prior to the available connection date;~~

~~(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and~~

~~(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.~~

~~(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.~~

~~(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.~~

~~(4)(2) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.~~

~~(5)(a)(3) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.~~

~~(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.~~

~~(6)(4) Except as provided in subsection (7), the department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) (3) to the general fund.~~

~~(7) Receipts from the taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted. (Terminates December 31, 2005—sec. 10, Ch. 424, L. 1999.)~~

~~**23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax credit records distribution quarterly statement and payment.** (1) A licensed machine owner shall pay to the department a~~

~~video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.~~

~~(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:~~

~~(i) the permit was active for the video gambling machine prior to the available connection date;~~

~~(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and~~

~~(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.~~

~~(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.~~

~~(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.~~

~~(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.~~

~~(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.~~

~~(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.~~

~~(6) The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund."~~

Section 3. 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 gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such 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 ~~bingo and keno video keno, bingo, or combination poker-keno-bingo 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 4. 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;

(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 ~~approved for connection to the department's automated accounting and reporting system~~ to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet if:

~~(i) after October 1, 2002, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system to report video gambling machine information utilizing an approved automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the to utilize an approved automated accounting and reporting system; or~~

~~(ii) after October 1, 2003, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement~~

~~with the department for connection of the machine to the system, but the system is unavailable for connection;~~

(e) allow, on an individual license basis, licensed machine owners and operators of machines ~~connected to the department's~~ *that utilize an approved* automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected ~~by the department~~ for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of ~~the department's~~ *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) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and~~

~~(g)~~*(f)* minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines ~~that are connected to the department's~~ *utilize 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(6) 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 ~~based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account;~~

~~(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act.~~

~~(e) provide for training by the department of technicians who install, maintain, and repair video gambling machines and components connected to the automated accounting and reporting system and for a department list of technicians who have completed department training.~~

(d) describe specifications and a review and testing process for approved automated accounting and reporting systems to be utilized 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 5. Section 23-5-637, MCA, is amended to read:

“23-5-637. Automated Approved automated accounting and reporting system systems. (1) For the purposes of performing its duties under this chapter, minimizing regulatory costs, simplifying the reporting of video gambling machine revenue data, preserving the integrity of video gambling machines within its jurisdiction, lessening administrative and recordkeeping burdens for licensed machine owners and licensed operators and the department, and enhancing the management tools available to the industry and the state, the department may ~~operate and maintain, subject to the restrictions contained in subsections (3) and (4), approve~~ an automated accounting and reporting system for video gambling machines.

(2) Except as provided in subsection ~~(4), connection of video gambling machines to the department’s~~ (5) or as provided in an agreement for multiple-game software, utilization of an approved automated accounting and reporting system is voluntary for licensed machine owners and licensed operators who hold a valid current license prior to the available connection date.

(3) ~~(a) The department shall issue a request for proposals for the automated accounting and reporting system. The department may not sign a final contract for the purpose of acquiring an automated system unless it has obtained written confirmation from licensed machine owners who volunteer to participate in the automated system and whose commitment to participate covers 70% of the total number of video gambling machines that are capable of being connected to the automated system.~~

~~(b) The 70% calculation must be based on video gambling machines that had permits on July 15 prior to the contract date and on an analysis by the department of the feasibility of upgrading specific video gambling machine models based on the age of the video gambling machines, technologies employed, numbers of video gambling machines in a model series, and existence or nonexistence of a licensed manufacturer to support upgraded conversions.~~

~~(c) A request for proposals for the system must require that the proposal:~~

~~(i) provide that communication protocols between connected video gambling machines and the central system and between connected video gambling machines and on-premises site controllers do not favor any one central system vendor or component manufacturer; and~~

~~(ii) provide for computer backup and contingency planning to ensure that there will be no video gambling machine operation interruptions because of central system failures. An approved automated accounting and reporting system must provide for the recording and entry of video gambling machine permit and tax information and for the electronic transfer of funds through the use of web entry technology, the internet, or direct electronic communication with the department.~~

~~(4) After the available connection date:~~

~~(a) a A permit may not be issued for a video gambling machine manufactured after the available connection date July 1, 2005, that is not manufactured in a manner specifically designed to allow the video gambling machine to be connected to the department’s automated accounting and reporting system comply with communications standards adopted by department rules.~~

~~(b)(5) if If a permit holder voluntarily connects one or more video gambling machines at a premises to the department’s utilizes an approved automated~~

accounting and reporting system *for one or more video gambling machines at a premises*, all ~~connected~~ video gambling machines on the premises *that utilize the approved system*, including video gambling machines replacing ~~connected~~ video gambling machines *that utilize the approved system*, must remain connected to ~~the automated system~~ *continue to use the approved system* as long as video gambling machines are operated on the premises; ~~and~~

~~(c) if there is a change in the majority ownership interests of a licensed gambling business, all video gambling machines located on the premises must be connected to the department's automated accounting and reporting system within 5 years after the date on which the majority ownership change is approved by the department, unless there are five or fewer video gambling machines on the premises and:~~

~~(i) they are owned by the licensed operator; or~~

~~(ii) the premises are located in a city, town, or county with a population of 3,000 or less, according to the last official decennial census."~~

Section 6. Repealer. Section 23-5-638, MCA, and section 10, Chapter 424, Laws of 1999, are repealed.

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 320

[HB 104]

AN ACT GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE PROVISION FOR ESTABLISHING A GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT AND ELIMINATING THE PROVISION'S CONTINGENT EFFECTIVE DATE; CLARIFYING PROVISIONS ON THE REDEPOSIT OF CONTRIBUTIONS FOR MEMBERSHIP SERVICE AND ON RETIREES RETURNING TO EMPLOYMENT BY STRIKING RELEVANT LANGUAGE IN CURRENT CODE SECTIONS AND RECODIFYING THE LANGUAGE AS NEW SECTIONS; PROVIDING FOR THE OPTION TO PURCHASE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SERVICE; REVISING CERTAIN PROVISIONS GOVERNING THE RECALCULATION OF BENEFITS WHEN A RETIRED MEMBER RETURNS TO EMPLOYMENT; PROVIDING FOR THE REDUCTION OF RETIREMENT BENEFITS IN LIEU OF CANCELING THE BENEFITS IN CERTAIN CIRCUMSTANCES; CLARIFYING PROVISIONS ON EMPLOYEE TERMINATION PAY CONTRIBUTIONS; AMENDING SECTIONS 19-20-208, 19-20-212, 19-20-302, 19-20-401, 19-20-407, 19-20-415, 19-20-602, 19-20-716, 19-20-718, 19-20-802, 19-20-804, 19-20-806, AND 19-20-1001, MCA, AND SECTION 29, CHAPTER 111, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 19-20-208, 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, 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 ~~19-20-804~~ [section 14];

(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 2. Section 19-20-212, MCA, is amended to read:

"19-20-212. (~~Effective on occurrence of contingency~~) General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) (a) ~~The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. If at any time that the board finds that benefits payable or contributions required under this chapter would exceed the limits established under section 415 of the Internal~~

Revenue Code, the board ~~elects to~~ *may* establish a qualified governmental excess benefit arrangement, ~~the board shall~~ *and* adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code *and this section*.

(b) *An excess benefit arrangement established pursuant to this section is subject to the following requirements:*

(i) The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement.

(ii) The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement.

(iii) The benefit arrangement must be a separate part of the system. ~~The benefit arrangement is subject to the following requirements:~~

~~(iv)~~ (iv) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

~~(v)~~ (v) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30."

Section 3. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and

(f) a person elected to the office of county superintendent of schools.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public

employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in ~~19-20-804~~ [section 14].

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the

person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom."

Section 4. Section 19-20-401, MCA, is amended to read:

"19-20-401. Creditable service. (1) The creditable service of a member begins on the date of ~~his~~ *the member's* employment in a capacity prescribed for ~~his~~ eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from ~~his~~ *the member's* compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that ~~no~~ credit may *not* be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-20-402;

(d) any service awarded for employment while on leave under 19-20-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;

(f) any employment service awarded by the retirement board under the provisions of 19-20-408;

(g) any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;

(h) any service awarded by the retirement board for extension service employment under 19-20-410; ~~and~~

(i) any service awarded for absence ~~due to~~ *because of* employment-related injury under 19-20-411; *and*

(j) *any service awarded for service purchased under [section 7].*

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that ~~he~~ *the member* would have earned if ~~his~~ *the member's* first year part-time salary had been full-time."

Section 5. Section 19-20-407, MCA, is amended to read:

"19-20-407. No duplication of credit for same period of service. A member may not receive duplicate credit for the same period of service. *A retiree returning to active service may not be granted creditable service for the same period of time that the retiree was receiving a retirement benefit.*"

Section 6. Section 19-20-415, MCA, is amended to read:

“19-20-415. Procedure for purchase of service credit and pick up. (1)

A member who wishes to redeposit, pursuant to ~~19-20-602(3)~~ [section 9], amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments is elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall complete the irrevocable written application to purchase service provided for in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable written application to purchase service.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable written application. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pickup is the later of:

(i) the adoption of the employer's resolution; or

(ii) the date that the irrevocable written application is signed by both the member and the member's employer.

(b) The pickup does not apply to a contribution made before the effective date of the employer's resolution. A written application to purchase additional service that is in effect on the effective date of the employer's resolution is void, and the provisions of subsection (1) apply.

(4) The irrevocable written application to purchase service must be signed by the member and the member's employer and filed with the board. Subject to any maximum amounts or duration established by state or federal law, the irrevocable written application must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the installments required by subsection (4)(b) is 3 months, and the maximum duration is 5 years. The maximum number of years that may be purchased may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable written application does not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may not prepay any amounts under a binding, irrevocable written application.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable written application expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 7. Creditable service for employment under optional retirement program. (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 participation in the optional retirement program pursuant to 19-21-201, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the optional retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) Members may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(4) The provisions of 19-20-405 apply to creditable service purchased under this section.

Section 8. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings fund — member's contribution. (1) The annuity savings fund is a fund in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.15% of the member's earned compensation.

(2) Contributions to and payments from the annuity savings fund must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (2) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

~~(3) In addition to the normal contributions, 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 fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415.~~

~~(4)(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund."~~

Section 9. Redeposit of contributions previously withdrawn. 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 fund, 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 the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415.

Section 10. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to ~~subsection~~ *subsections (4) and (5)*, by signing a binding, irrevocable written

election at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, *except as provided in subsections (4) and (5)*.

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

~~(4)(5)~~ If a member and the member's employer fail to sign the written election within the time period required in subsection (1) ~~or if the member's~~

contribution is greater than the total amount of termination pay, the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection cannot *may not* be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code.”

Section 11. Section 19-20-718, MCA, is amended to read:

“19-20-718. (~~Effective on occurrence of contingency~~) Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system *required under part 4 or 6 of this chapter* that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board’s option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board’s options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member’s service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of “compensation”, “wages”, and “salary” include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.”

Section 12. 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(~~1~~) 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.”

Section 13. Section 19-20-804, MCA, is amended to read:

“19-20-804. (Temporary) Allowance for service retirement. ~~(1)~~ Except as provided in 19-20-806, upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member’s average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

~~(2) Except as provided in subsection (4), a retired member may be employed part time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:~~

~~(a) one-third of the sum of the member’s average final compensation; or~~

~~(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.~~

~~(3) Each year on July 1 following the member’s retirement effective date, the maximum earning amount allowed under subsection (2)(a) 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 year.~~

~~(4) (a) Except as provided in 19-20-806 and subsection (5) of this section, the retirement benefit of a retired member employed in a full time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.~~

~~(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~(c) Upon retirement after cancellation of a retired member’s benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member’s previous retirement plus any service credit accumulated subsequent to reemployment.~~

~~(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who~~

~~elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).~~

~~(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated. (Terminates July 1, 2006—sec. 6, Ch. 120, L. 2003.)~~

19-20-804. (Effective July 1, 2006) Allowance for service retirement.

~~(1) Upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.~~

~~(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:~~

~~(a) one-third of the sum of the member's average final compensation; or~~

~~(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.~~

~~(3) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) 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 year.~~

~~(4) (a) Except as provided in subsection (5), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.~~

~~(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

~~(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).~~

~~(5) If an early retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."~~

Section 14. Postretirement employment limitations — cancellation and recalculation of benefits. (1) Except 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:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(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) 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 subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or 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) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service 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. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804, if the member has attained normal retirement age, or under 19-20-802, if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form 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 canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

Section 15. Section 19-20-806, MCA, is amended to read:

“19-20-806. (Temporary) Reemployment of certain retired teachers, specialists, or administrators — limitations — employer defined. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance, except a disability retirement allowance pursuant to part 9 of this chapter, for at least 12 months may be employed on a part-time or full-time basis by an employer without the loss or interruption of any payments of retirement benefits if:

(i) the member holds a valid certificate under the provisions of 20-4-106; and

(ii) the employer provides evidence to the office of public instruction each year that the employer has been unable to fill the position because the employer has received no applications for the open position or has not received an acceptance to an offer to fill the position from a nonretired teacher, specialist, or administrator;

(b) an employer shall by the 15th day of each month report to the office of public instruction and to the ~~teachers'~~ retirement system the name, social security number, and gross earnings of each teacher, specialist, or administrator employed in the preceding month under the provisions of this section;

(c) a retired member reemployed under this section is ineligible for active membership under 19-20-302; and

(d) the office of public instruction and the ~~teachers'~~ retirement system shall report to the appropriate committee in the 2007 legislative session regarding the implementation and results of this section.

(2) A retiree reemployed pursuant to this section must be considered an active member for the purposes of calculating retirement system contributions required under 19-20-604 and 19-20-605.

(3) A retiree reemployed pursuant to this section is exempt from the earnings and employment limits provided in ~~19-20-804(2) through (5)~~ [section 14].

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retiree is subject to all terms and conditions of the agreement and is entitled to all benefits and protections provided by the agreement.

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

(6) As used in this section, “employer” means a public school district, as defined in 20-6-101 and 20-6-701, youth correctional facilities, special education cooperatives, and the Montana school for the deaf and blind. (Terminates July 1, 2006—sec. 6, Ch. 120, L. 2003.)”

Section 16. Section 19-20-1001, MCA, is amended to read:

“19-20-1001. Allowances for death of member. (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(4) and section 5, Chapter 549, Laws of 1981, 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 payments made to the beneficiary do not equal the amount of the member’s accumulated contributions before 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, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.”

Section 17. Section 29, Chapter 111, Laws of 1999, is amended to read:

“Section 29. Effective date dates — contingent effective dates date.

(1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) The provisions in [sections 4 and 19], providing for the creation and use of an excess benefit arrangement, are effective ~~on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan~~ *July 1, 2005.*

(3) The provisions in [sections 9, 13, and 18], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation

and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.”

Section 18. Codification instruction. (1) [Sections 7 and 9] are intended to be codified as an integral part of Title 19, chapter 20, part 4, and the provisions of Title 19, chapter 20, part 4, apply to [sections 7 and 9].

(2) [Section 14] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 14].

Section 19. Effective date. [This act] is effective on passage and approval.

Section 20. Retroactive applicability. [Section 14(4)(b)] applies retroactively, within the meaning of 1-2-109, to benefits recalculated on and after July 1, 2002.

Approved April 21, 2005

CHAPTER NO. 321

[HB 109]

AN ACT TRANSFERRING RESPONSIBILITY FOR THE MAINTENANCE OF THE CAPITOL COMPLEX GROUNDS FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-811, 2-17-812, AND 2-17-817, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-17-803, MCA, is amended to read:

“2-17-803. Capitol complex advisory council established — membership — staff services — compensation. (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director’s designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established in 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. ~~The departments~~ *department* of administration ~~and fish, wildlife, and parks~~ shall provide staff services to the council ~~and share the costs associated with council operations.~~

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the daily allowance provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsection (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302.”

Section 2. Section 2-17-804, MCA, is amended to read:

“2-17-804. Council duties and responsibilities. (1) The council shall:

(a) adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;

(b) review proposals for long-term displays of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds and for the naming of state buildings, spaces, and rooms in the capitol complex;

(c) advise the legislature on the placement of busts, statues, memorials, monuments, or art displays of a long-term nature in public areas of the capitol complex and on the capitol complex grounds, including the executive residence and the original governor’s mansion; *and*

(d) advise the department of administration on interior decoration of the capitol; ~~and~~

~~(e) advise the department of fish, wildlife, and parks on, grounds maintenance, and grounds displays.~~

(2) In advising the legislature on long-term displays, the council shall consider whether the bust, statue, memorial, monument, or art display:

(a) reasonably fits the long-range master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the capitol complex;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in its design and construction;

(g) will be safely and aesthetically suited to ~~its~~ *the* installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that ~~it~~ *the council* has reviewed for naming buildings, spaces, and rooms and for placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this part. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized.”

Section 3. Section 2-17-805, MCA, is amended to read:

“2-17-805. Function of department of administration — capitol area master plan — advice of capitol complex advisory council and

legislative council. (1) With advice from the council, the ~~departments~~ *department* of administration and ~~fish, wildlife, and parks~~ shall establish and maintain a long-range master plan for the orderly development of the capitol complex. The long-range master plan must be developed and maintained, with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County, based, without limitation, upon zoning regulations, population trends, and plans for rapid transit development; and

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and state property in the capitol complex.

(2) The legislative council shall consult with and advise the department of administration concerning the assignment of space in the capitol.

(3) The Montana historical society shall protect and preserve all publicly held, permanent artwork in the capitol complex and request funding for periodic inspection, maintenance, and repair of the artwork from the trust fund established in 15-35-108 for protection of works of art in the state capitol and other cultural and aesthetic projects.

(4) The legislative council shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol.”

Section 4. Section 2-17-811, MCA, is amended to read:

“2-17-811. Custodial care of capitol buildings and grounds. (1) The department of administration is custodian of all state property *and grounds* in the state capitol area, which is the geographic area within a 10-mile radius of the state capitol.

(2) ~~It is the duty of the~~ *The* department ~~to~~ *shall* supervise and direct the work of caring for and maintaining buildings and equipment in the state capitol area. The department shall provide or approve all custodial, maintenance, and security work done on state-owned or leased buildings in the state capitol area.

(3) A state agency may not alter, improve, repair, or remodel a state building in the state capitol area without the approval of the department.

(4) ~~It is the duty of the~~ *The* department of ~~fish, wildlife, and parks~~ *to shall* maintain or approve the maintenance of the grounds in the state capitol area.”

Section 5. Section 2-17-812, MCA, is amended to read:

“2-17-812. Inventory of improvements. (1) The department of ~~fish, wildlife, and parks~~ *administration* shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements upon the grounds of the capitol complex, including the executive residence and *the* original governor’s mansion.

(2) The Montana historical society shall maintain an inventory of all publicly held commemorative displays, statues, artwork, and plaques in the capitol complex.

(3) ~~Both agencies~~ *Each agency* shall make ~~their inventories~~ *the agency's inventory* available to the council."

Section 6. Section 2-17-817, MCA, is amended to read:

"2-17-817. Highway patrol officers' memorial. (1) The department of administration shall set aside on the capitol grounds an area on the ~~north west~~ side of the capitol for a memorial to Montana's slain highway patrol officers. The area must be agreed upon between the Montana highway patrol and the department of ~~fish, wildlife, and parks~~ *of administration* and must maintain the historical design integrity of the block on which the capitol is located, also known as capitol square.

(2) The memorial must be constructed to consider long-term maintenance efficiency and must be paid for by private donations. The memorial must be maintained with the assistance of private donations as part of the capitol grounds maintenance program provided in 2-17-811."

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 322

[HB 119]

AN ACT MAKING PERMANENT THE CRITERIA FOR THE USE OF MOTORBOAT ACCOUNT FUNDS FOR BOATING FACILITIES, INCLUDING THE USE OF FUNDS TO MATCH FEDERAL FUNDS PURSUANT TO RECOMMENDATIONS OF THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTRACT WITH COUNTIES TO ADMINISTER DESIGNATED PARTS OF THE STATE RECREATIONAL BOATING SAFETY PROGRAM; MAKING PERMANENT THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AMOUNT OF THE FINE FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX AT FOUR TIMES THE FEE DUE; REPEALING SECTION 6, CHAPTER 511, LAWS OF 1993, SECTIONS 9 AND 10, CHAPTER 476, LAWS OF 1995, AND SECTIONS 2, 3, AND 4, CHAPTER 95, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Repealer. Section 6, Chapter 511, Laws of 1993, sections 9 and 10, Chapter 476, Laws of 1995, and sections 2, 3, and 4, Chapter 95, Laws of 2001, are repealed.

Section 2. Effective date. [This act] is effective June 28, 2006.

Approved April 21, 2005

CHAPTER NO. 323

[HB 142]

AN ACT REVISING LAWS RELATING TO STATE FINANCE OF LOCAL WATER AND SEWER PROJECTS; AUTHORIZING THE ISSUANCE OF GRANT OR REVENUE ANTICIPATION NOTES BY THE BOARD OF

EXAMINERS; AUTHORIZING FORGIVENESS OF CERTAIN LOANS TO DISADVANTAGED COMMUNITIES UNDER THE DRINKING WATER STATE REVOLVING FUND PROGRAM; AUTHORIZING ADDITIONAL USES OF THE PROCEEDS OF STATE GENERAL OBLIGATION BONDS; AUTHORIZING STATE DEBT; AMENDING SECTIONS 17-5-805, 75-5-1122, 75-6-226, AND 75-6-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-5-805, MCA, is amended to read:

“17-5-805. Bond, grant, or revenue anticipation notes — when issued — payment of principal and interest. (1) When the board has been authorized to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of:

(a) the money to be derived from the sale of the bonds;

(b) *the money to be received from the federal government for the program for which bonds may be issued; or*

(c) *other money to be received as revenue for the specified program.*

(2) The notes must be designated as “bond anticipation notes”, “*grant anticipation notes*”, or “*revenue anticipation notes*”. The proceeds of the sale of the ~~bond anticipation~~ notes may be used only for the purposes for which the proceeds of the bonds, *grants, or revenue* could be used, including costs of issuance. If, prior to the issuance of the bonds *or receipt of the proceeds of the grants or revenue*, it becomes necessary to *pay or* redeem outstanding notes, additional ~~bond anticipation~~ notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds *or receipt of the proceeds of the grants or revenue* in anticipation of which the original notes were issued.

~~(2)(3)~~ *(3)* Bond, *grant, or revenue* anticipation notes ~~or other short term evidences of indebtedness~~ maturing not more than ~~1 year~~ *2 years* after the date of issue may be issued from time to time as the proceeds thereof are needed. ~~Such~~ *The* notes must be authorized by the board and must have ~~such~~ terms and details ~~as that~~ may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of ~~such~~ *the* notes; and

(iii) the maturity date or maximum maturity date of the notes.

~~(3)(4)~~ *(4)* Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection ~~(2)~~ *(3)* to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and ~~such~~ other terms and details of the notes ~~as that~~ may be considered appropriate by the board; or

the state treasurer in the event of ~~such a~~ delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless ~~and until~~ the board revokes ~~such the~~ authority to refund; and

(d) such other terms and conditions ~~as~~ that the board may consider appropriate.

~~(4)~~(5) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on ~~such~~ lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing ~~such~~ terms and conditions ~~as~~ that the board may authorize in the resolution approving them.”

Section 2. Section 75-5-1122, MCA, is amended to read:

“75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$40 million ~~and the issuance and sale in principal amount~~ of general obligation bonds ~~in this amount outstanding from time to time~~ for the purpose of:

(1) providing the state’s share of the program; *and*

(2) *funding portions of loans on an interim basis pending receipt of:*

(a) *grant payments from the environmental protection agency for which federal legislation appropriating the proceeds of the grants has been enacted; or*

(b) *other revenue for the program.*”

Section 3. Section 75-6-226, MCA, is amended to read:

“75-6-226. Loan subsidy for disadvantaged communities. (1) Notwithstanding any other provision in this part, if the program makes a loan pursuant to 75-6-221(1) to a disadvantaged community or to a community that the department expects to become a disadvantaged community as a result of a proposed project, the department may provide additional subsidization in the form of a reduced interest rate, *the forgiveness of principal, or a combination of both.*

(2) The total annual amount of loan subsidies made by the department pursuant to subsection (1) may not exceed 30% of the capitalization grant received by the department for each fiscal year.”

Section 4. Section 75-6-227, MCA, is amended to read:

“75-6-227. Creation of debt. The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed \$30 million ~~and authorizes the issuance and sale in principal amount~~ of general obligation bonds ~~in this amount outstanding from time to time~~ for the purpose of:

(1) providing the state’s share of the drinking water program; *and*

(2) *funding portions of loans on an interim basis pending receipt of:*

(a) *grant payments from the environmental protection agency for which federal legislation appropriating the proceeds of the grants has been enacted; or*

(b) *other revenue for the program.”*

Section 5. Two-thirds vote required. Because [sections 2 and 4] authorize additional uses of proceeds of state debt and an increase in the amount 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 6. Coordination instruction. If both Senate Bill No. 58 and [this act] are passed and approved, then the first sentence of subsection (3) of 17-5-805 in [this act] must read:

“(3) Bond, grant, or revenue anticipation notes maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds are needed.”

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 324

[HB 169]

AN ACT REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE TOBACCO MASTER SETTLEMENT AGREEMENT; CLARIFYING THE APPLICATION OF THE TOBACCO RESERVE FUND LAWS TO ROLL-YOUR-OWN TOBACCO; REQUIRING A TOBACCO PRODUCT MANUFACTURER WHO WISHES TO HAVE PRODUCTS LISTED ON THE ATTORNEY GENERAL'S DIRECTORY OF PRODUCTS PERMISSIBLE FOR SALE IN MONTANA TO DEMONSTRATE COMPLIANCE WITH THE LAW; ALLOWING THE ATTORNEY GENERAL TO REQUEST THE DEPARTMENT OF JUSTICE TO PROCEED JUDICIALLY TO SEEK REVOCATION OF A NONCOMPLIANT WHOLESALER'S LICENSE; CLARIFYING THE CALCULATION OF ATTORNEY FEES, COSTS, AND PENALTIES RECOVERED IN ENFORCEMENT ACTIONS; REVISING AND EXTENDING RULEMAKING AUTHORITY; REVISING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 16-11-402, 16-11-404, 16-11-502, 16-11-503, 16-11-507, 16-11-509, 16-11-511, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A CONTINGENT VOIDNESS PROVISION.

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

Section 1. Section 16-11-402, MCA, is amended to read:

“16-11-402. Definitions. (1) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of

ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with 16-11-403(2) of this Act.

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(a) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in paragraph (a) or (b). The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco

product manufacturer unless such affiliate itself falls within any of paragraphs (a) - (c) above.

(10) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) ~~bearing the excise tax stamp of the State.~~ The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year."

Section 2. Section 16-11-404, MCA, is amended to read:

"16-11-404. Attorney fees and costs. (1) In an action under 16-11-403(2)(c), the court, upon a finding that a tobacco product manufacturer has failed to comply with its obligations under 16-11-403(1) or (2)(a), shall award the attorney general the expenses incurred in investigating the claim, the costs of suit, and reasonable attorney fees. In cases in which outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general for attorney fees and expenses in prosecuting the action. In all other cases, the attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.

(2) Investigation expenses, attorney fees, and costs recovered under this section are allocated to the department of justice for deposit in the attorney general's major litigation account and may be used by the attorney general for any purpose for which funds appropriated to that account may be used. ~~The funds are statutorily appropriated as provided in 17-7-502.~~ (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)"

Section 3. Section 16-11-502, MCA, is amended to read:

"16-11-502. Definitions. As used in this part, the following definitions apply:

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and includes any use of a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(2) "Cigarette" has the meaning provided in 16-11-402.

(3) "Department" means the department of revenue.

(4) "Master Settlement Agreement" has the meaning provided in 16-11-402.

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning provided in section II(jj) of the Master Settlement Agreement defined in 16-11-402 and all amendments thereto.

- (7) "Qualified escrow fund" has the meaning provided in 16-11-402.
- (8) "Tobacco product manufacturer" has the meaning provided in 16-11-402.
- (9) "Units sold" has the meaning provided in 16-11-402.

(10) "Wholesaler" means a person that is authorized to affix tax insignia to packages or other containers of cigarettes under 16-11-113, ~~or any~~ a person that is required to remit the tobacco tax imposed on cigarettes pursuant to 16-11-111, *or a person that is required to remit the tobacco tax imposed on other tobacco products under 16-11-202.* (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)"

Section 4. Section 16-11-503, MCA, is amended to read:

"16-11-503. Certifications. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver, on a form prescribed by the attorney general, a certification to the director of the department and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with ~~16-11-403 parts 4 and 5 of this chapter and any rules adopted pursuant to 16-11-511.~~

(2) A participating manufacturer shall include in its certification a list of its brand families.

(3) (a) A nonparticipating manufacturer shall include in its certification a list of all of its brand families, the number of units sold in the state during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year.

(b) The certification must indicate by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(c) The certification must identify by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) A tobacco product manufacturer shall update its list of brand families 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and the director of the department.

(5) A nonparticipating manufacturer shall further certify:

(a) that the nonparticipating manufacturer is registered to do business in the state and has appointed an agent for service of process and has provided notice as required by 16-11-506;

(b) that the nonparticipating manufacturer has:

(i) established and continues to maintain a qualified escrow fund; and

(ii) executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(c) that the nonparticipating manufacturer is in full compliance with 16-11-403 and this section and any rules adopted pursuant to 16-11-403 and this section;

(d) (i) the name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by 16-11-403 and all rules adopted pursuant to 16-11-403;

(ii) the account number of the qualified escrow fund and any subaccount number for the state of Montana;

(iii) the amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification considered necessary by the attorney general to confirm the provisions of this subsection (5)(d)(iii); and

(iv) the amounts and dates of any withdrawal or transfer of funds that the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to 16-11-403 and all rules adopted pursuant to 16-11-403.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(a) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(b) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of 16-11-403.

(7) This part may not be construed to limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payment under the Master Settlement Agreement or for purposes of 16-11-401 through 16-11-403.

(8) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other similar information relied upon for its certifications for a period of 5 years unless otherwise required by law to maintain them for a longer period of time. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 5. Section 16-11-507, MCA, is amended to read:

“16-11-507. Reporting of information. (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 or 16-11-203 and that the wholesaler sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part. The department and attorney general shall share the information received under this part with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of 16-11-403, this part, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with this part. *All information submitted by a wholesaler or tobacco product manufacturer under this section must be full, complete, and accurate.* (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 6. Section 16-11-509, MCA, is amended to read:

“16-11-509. Penalties and other remedies. (1) In addition to any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated 16-11-505 or any rule adopted pursuant to that section, *the department may revoke or suspend* the license of the wholesaler ~~may be revoked or suspended~~ in the manner provided by 16-11-144 in a proceeding ~~brought~~ *initiated* by the department or ~~by~~ *at the request of* the attorney general. For each violation of 16-11-505, a civil penalty in the amount of \$250 for the first full or partial pack and \$10 for each additional full or partial pack to which a tax insignia is affixed or that is sold, offered for sale, or possessed for sale in violation of 16-11-505 may be imposed. Each tax insignia affixed, ~~and~~ each offer to sell cigarettes, ~~and each pack sold, offered for sale, or possessed for sale~~ in violation of 16-11-505 constitutes a separate violation. The penalty may be imposed in the manner provided by 16-11-143(2) in a proceeding brought by the department or the attorney general.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of 16-11-505 may be considered contraband under 16-11-147. The cigarettes are subject to seizure and forfeiture as provided in 16-11-147, and all cigarettes seized and forfeited must be destroyed and not resold.

(3) The attorney general may seek an injunction to restrain a threatened or actual violation of 16-11-505 or 16-11-507(1) or (4) by a wholesaler and to compel the wholesaler to comply with those sections.

(4) (a) In any action brought pursuant to this part, the prevailing party is entitled to recover the costs of the action and reasonable attorney fees calculated as provided in 16-11-404. If the state is the prevailing party, its recoverable costs must include the state’s costs of investigation of the violation.

(b) In cases in which the state is the prevailing party and outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general's office for attorney fees and expenses in prosecuting the action. In all other cases in which the state is the prevailing party, the state's attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau of the department for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.

(5) (a) It is unlawful for a person to:

(i) sell, offer for sale, or distribute cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505; or

(ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505.

(b) A violation of this section is a misdemeanor punishable as provided in 16-11-148.

(6) If a court determines that a person has violated this part, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be paid to the state treasurer for deposit in the trust fund created by Article XII, section 4, of the Montana constitution.

(7) Penalties, investigation expenses, attorney fees, and costs recovered under parts 4 and 5 of this chapter are allocated to the department of justice for deposit in the major litigation account and may be used for any purpose for which funds deposited in that account may be used. [The funds are statutorily appropriated, as provided in 17-7-502, to the department of justice.]

~~(7)~~(8) Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of this state. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 7. Section 16-11-511, MCA, is amended to read:

“16-11-511. Rules. The attorney general may adopt rules necessary to implement *part 4* and this part. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 8. 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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312;

10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; ~~16-11-509~~; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; ~~16-11-404~~; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362;

80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 10. Effective dates. (1) [Sections 1 and 3 through 7 and this section] are effective on passage and approval.

(2) [Sections 2, 8, 9, and 11] are effective July 1, 2005.

Section 11. Contingent voidness. If the general appropriations act approved by the 59th legislature appropriates at least \$75,639 for fiscal year 2006 and at least \$72,618 for fiscal year 2007 to the department of justice for personal services, equipment, and operating expenses for a full-time attorney position for the purpose of conducting enforcement matters related to the tobacco settlement agreement described in 16-11-401, then [section 2], the bracketed language in [section 6], and [sections 8 and 9] are void.

Approved April 21, 2005

CHAPTER NO. 325

[HB 170]

AN ACT MAKING TECHNICAL CORRECTIONS TO THE LAW ON FUND TRANSFERS RELATING TO CERTAIN VEHICLE TAXES AND FEES; CLARIFYING THE YEARS IN WHICH MONEY FOR THE NOXIOUS WEED STATE SPECIAL REVENUE ACCOUNT AND FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IS ALLOCATED; CLARIFYING THE APPLICATION OF THE \$2 ANNUAL SEARCH AND RESCUE SURCHARGE; CLARIFYING THAT VEHICLE COUNTS NECESSARY FOR CERTAIN CALCULATIONS BE DETERMINED FOR VEHICLES EVEN IF VEHICLE REGISTRATION OCCURRED PRIOR TO JANUARY 1, 2004; AMENDING SECTION 15-1-122, MCA, AND SECTION 50, CHAPTER 592, LAWS OF 2003; 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 15-1-122, MCA, is amended to read:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) \$75,000 in fiscal year 2003;~~

~~(b) \$0 in fiscal years 2004 and 2005;~~

~~(e)(a) \$3,050,205 in fiscal year 2006; and~~

~~(d)(b) in each succeeding fiscal year, the amount in subsection ~~(2)(e)~~ (2)(a),~~ increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and

23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 ~~in~~ *through* fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

(e) to the supplemental benefits for highway patrol officers' retirement account, provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;

(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;

(g) to the search and rescue account provided for in 10-3-801:

(i) \$2 a year for each vessel ~~{subject to the search and rescue surcharge}~~ *fee* in 23-2-517;

(ii) \$2 a year for each snowmobile ~~{subject to the search and rescue surcharge}~~ *fee* in 23-2-615(1)(b) and 23-2-616(3); and

(iii) \$2 a year for each off-highway vehicle ~~{subject to the search and rescue surcharge}~~ *fee* in 23-2-803; and

(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently

registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

Section 2. Section 50, Chapter 592, Laws of 2003, is amended to read:

“**Section 50. Applicability.** [This act] applies to:

(1) *registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;*

(2) *vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004.*”

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

Section 4. Retroactive applicability. (1) [Section 2] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004.

Approved April 21, 2005

CHAPTER NO. 326

[HB 173]

AN ACT ALLOWING THE DEPARTMENT OF MILITARY AFFAIRS TO USE THE SEARCH AND RESCUE SURCHARGE MONEY IN THE STATE SPECIAL REVENUE ACCOUNT BOTH DURING THE FISCAL YEAR WHEN THE MONEY IS DEPOSITED AND DURING THE FOLLOWING FISCAL YEAR; AMENDING SECTION 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-601, MCA, is amended to read:

“**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsections (7) and (9), 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 ~~this code~~ 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) and (8), 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) 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 collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) 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) 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) (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) ~~At the end of each fiscal year, Any money deposited in the special revenue account in a fiscal year is available for reimbursement of search and rescue missions and to provide matching funds during the fiscal year when the money is deposited and during the following fiscal year. After this period, any money remaining in the special revenue account after the transfers provided for in this section must be transferred to the general license account of the department.~~

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

Approved April 21, 2005

CHAPTER NO. 327

[HB 204]

AN ACT CHANGING THE PURPOSE FOR WHICH THE DEPARTMENT OF JUSTICE MAY USE EXAMINATION COSTS PAID BY A MANUFACTURER SEEKING THE EXAMINATION AND APPROVAL OF A NEW VIDEO GAMBLING MACHINE OR ASSOCIATED EQUIPMENT OR A MODIFICATION TO AN APPROVED MACHINE OR ASSOCIATED EQUIPMENT; DELETING THE STATUTORY APPROPRIATION OF THE COSTS TO THE DEPARTMENT; AMENDING SECTIONS 17-7-502 AND 23-5-631, MCA; AND PROVIDING AN 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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; ~~23-5-631~~; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 2. Section 23-5-631, MCA, is amended to read:

“23-5-631. Examination and approval of new video gambling machines and associated equipment — fee. (1) The department shall examine and may approve a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment that is manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used. A licensed manufacturer or distributor may bring a video gambling machine or associated equipment authorized by this chapter into the state for research and development on behalf of a licensed manufacturer prior to submission of the machine or equipment to the department for approval.

(2) A video gambling machine or associated equipment or a modification to an approved machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer is licensed as required in 23-5-625.

(3) All video gambling machines or associated equipment approved by the state prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer seeking the examination and approval of a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the

completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) ~~Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and modifications to approved machines and associated equipment and to issue refunds for overpayments must be deposited in an account in the state special revenue fund and used to administer this part and for other purposes provided by law.~~

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine or associated equipment or a modification to an approved machine or associated equipment prior to its distribution and placement for play by the public. A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department.”

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 328

[HB 211]

AN ACT CLARIFYING THE TERM OF THE SUPREME COURT; AMENDING SECTION 3-2-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 3-2-303, MCA, is amended to read:

“3-2-303. Terms Term of supreme court. ~~(1) Four terms of the The~~ *supreme court must be held may have only one term each year at. The term must be held at the seat of government; commencing and must commence on the first Tuesdays of March, June, October, and December day of January.*

~~(2) The chief justice or any two justices have power to call a special term at any time.”~~

Section 2. Effective date. [This act] is effective January 2, 2006.

Approved April 21, 2005

CHAPTER NO. 329

[HB 213]

AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS GOVERNING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS, THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT, AND THE LOCAL POLICE OFFICERS' RETIREMENT FUNDS; CLARIFYING TERMINOLOGY RELATED TO

TERMINATION OF SERVICE AND EMPLOYMENT; REFINING THE DEFINITION OF "VESTED"; CLARIFYING SERVICE CREDIT IN MORE THAN ONE SYSTEM; CHANGING THE HOURS THAT MAY BE WORKED WHEN A RETIREE RETURNS TO WORK; PROVIDING FOR CORRECTIONS TO SERVICE PURCHASE ERRORS; DELETING THE BAN ON ESTABLISHING A NEW ACCOUNT FOR AN ALTERNATE PAYEE; CLARIFYING ELIGIBILITY TO APPLY FOR DISABILITY BENEFITS; CLARIFYING EDUCATION PROGRAM REQUIREMENTS; DELETING THE USE OF COVERED PAYROLL TERMINOLOGY REGARDING EMPLOYER CONTRIBUTIONS; CLARIFYING THE DEFINITION OF "COMPENSATION"; REVISING OPTIONAL MEMBERSHIP ELECTION PROVISIONS; CLARIFYING EMPLOYER PAYMENTS FOR EMPLOYEE SERVICE PURCHASES; CLARIFYING DISABILITY BENEFITS FOR PUBLIC EMPLOYEES' RETIREMENT SYSTEM MEMBERS WHO JOINED BEFORE FEBRUARY 24, 1991; CLARIFYING SURVIVORSHIP PAYMENT OPTIONS; CLARIFYING RETIREMENT BENEFIT PAYMENT OPTION 4; CLARIFYING CERTAIN PROVISIONS IN THE DEFINED CONTRIBUTION RETIREMENT PLAN UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CORRECTING AN OVERSIGHT TO ALLOW MEMBERS OF THE JUDGES' RETIREMENT SYSTEM TO PURCHASE MILITARY SERVICE; REVISING THE ELECTION OF GUARANTEED ANNUAL BENEFIT PROVISIONS IN THE JUDGES' RETIREMENT SYSTEM; ELIMINATING A PROVISION IN CERTAIN SYSTEMS THAT CONFLICTED WITH OTHER SYSTEMS' PROVISIONS REGARDING PAYMENTS TO MINOR CHILDREN; ELIMINATING A REQUIREMENT THAT FIRE DISTRICTS HAVE CERTAIN INSURANCE RATINGS IN ORDER FOR VOLUNTEER FIREFIGHTERS TO GET SERVICE CREDIT; REVISING CATCHUP PROVISIONS OF THE DEFERRED COMPENSATION PLAN; REVISING THE DEADLINE BY WHICH LOCAL POLICE FUND INFORMATION MUST BE SUBMITTED TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD; COORDINATING DEPARTMENT OF JUSTICE PROVISIONS REGARDING INJURY AND REASSIGNMENT OF HIGHWAY PATROL OFFICERS WITH THE DISABILITY PROVISIONS OF THE HIGHWAY PATROL OFFICES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-303, 19-2-502, 19-2-602, 19-2-703, 19-2-704, 19-2-706, 19-2-903, 19-2-907, 19-2-908, 19-2-909, 19-3-108, 19-3-112, 19-3-201, 19-3-316, 19-3-318, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-505, 19-3-908, 19-3-1002, 19-3-1005, 19-3-1015, 19-3-1204, 19-3-1501, 19-3-2104, 19-3-2111, 19-3-2112, 19-3-2114, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2126, 19-5-103, 19-5-402, 19-5-404, 19-5-410, 19-5-701, 19-5-902, 19-6-301, 19-6-402, 19-6-404, 19-6-505, 19-6-709, 19-7-301, 19-7-403, 19-7-404, 19-7-801, 19-7-1001, 19-8-301, 19-8-502, 19-8-504, 19-8-801, 19-9-301, 19-9-703, 19-9-710, 19-9-804, 19-9-902, 19-9-905, 19-9-1202, 19-9-1207, 19-9-1208, 19-13-301, 19-13-605, 19-13-802, 19-13-805, 19-17-108, 19-17-407, 19-19-205, 19-50-103, 19-50-104, 44-1-515, AND 44-1-518, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "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) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "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) "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) "Department" means the department of administration.

(17) "Designated beneficiary" means the 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) "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.

(19) "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.

(20) "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.

(21) "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.

(22) "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.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who ~~is not an active or retired member~~ *terminates service and does not retire or take a refund of the member's accumulated contributions.*

(25) "Internal Revenue Code" has the meaning provided in 15-30-101.

(26) "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.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) (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.

(29) "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.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "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.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has:

(a) ~~been~~ terminated from service ~~for at least 30 days~~; and

(b) ~~has~~ received and accepted a retirement benefit from a retirement plan.

(36) "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.

(37) "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).

(38) "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.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "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.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(43) "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.

(44) "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.

(45) "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.

(46) "Termination of employment", "*termination from employment*", "*terminated employment*", "*terminated from employment*", or "~~termination of service~~" "*terminate employment*", or "*terminates employment*" means that: the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination

(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.*

(47) "*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) *the member is no longer receiving compensation for covered employment; and*

(c) *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 (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.*

(47)(48) "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.

(48)(49) "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.

~~(49)~~(50) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan 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.

~~(50)~~(51) "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."

Section 2. Section 19-2-502, MCA, is amended to read:

"19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership."

Section 3. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member ~~whose service has been discontinued~~ *who has terminated service*, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who ~~terminates from~~ *has terminated* service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible ~~after termination~~ without a written application being filed by the member.

(3) A nonvested member who ~~terminates from~~ *has terminated* service with accumulated contributions of \$200 to \$5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible ~~after termination~~, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or *by a member who is terminating member service and is eligible to receive a refund of \$200 or more of accumulated contributions*, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section

401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient.”

Section 4. Section 19-2-703, MCA, is amended to read:

“19-2-703. No duplication of benefits for same period of service. (1) A member may not receive service credit or membership service in more than one retirement system, plan, or program under Title 19 for the same ~~period of~~ service.

(2) A member may not receive service credit or membership service in more than one retirement system, plan, or program in Title 19 for the same period of military service.”

Section 5. Section 19-2-704, MCA, is amended to read:

“19-2-704. Purchasing service credits allowed — payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to ~~contribute amounts in addition to the mandatory employee contributions required by the member’s retirement system~~ *make additional contributions* to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member’s employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member’s employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the *additional* contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective *additional* contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the ~~employee~~ *employee's additional* contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any *additional* contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction, except when a member with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j).

(7) If a member terminates ~~service employment~~ or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid ~~as of the date of termination~~ unless further payment is made as provided in this subsection. In the case of a termination *from employment*, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 6. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service credit for *active* member involuntarily terminated from *service employment*. (1) ~~An~~ *The provisions of subsection (3) apply to an* employee of the state or university system ~~is entitled to the involuntary termination provision provided in subsection (3) if:~~

(a) the employee is ~~a~~ *an active* member of the public employees', game wardens' and peace officers', sheriffs', *firefighters' unified*, or highway patrol officers' retirement system;

(b) ~~the employee's active service employee is~~ *has* involuntarily ~~terminated~~ *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*, ~~because of term limits terminating the service of the 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 ~~termination~~ *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, ~~or 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 ~~by the terminated employee~~.

(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). ~~A~~ *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 ~~a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other 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 7. Section 19-2-903, MCA, is amended to read:

“19-2-903. Adjustment of errors in payments. (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

- (a) adjustment of subsequent payments from a member or an employer;
- (b) installment payments or a lump-sum payment from an employer; or
- (c) a lump-sum payment or a rollover from a member.

(2) *If a purchase of service credit made pursuant to 19-2-704 is determined to be incorrect, the board may approve correcting the error by any of the following methods:*

(a) adjusting the subsequent lump-sum or installment payments from the member or the member’s employer;

(b) accepting a lump-sum payment or rollover from the member for the amount underpaid; or

(c) granting the member service credit proportional to the amount actually paid.

~~(2)(3) If any fraudulent change or any inadvertent mistake in records fraud or error results in any a member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and, if necessary, equitably adjust the payments to the member, survivor, or beneficiary in an equitable manner.”~~

Section 8. Section 19-2-907, MCA, is amended to read:

“19-2-907. Alternate payees — family law orders — rulemaking. (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) “family law order” means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, 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

(b) “participant” means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and 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 not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned as a percentage only if existing benefit payments are apportioned as a percentage. The adjustments must be apportioned as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may ~~not~~ be established for an alternate payee, *but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.*

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) 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.

(9) 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.

(10) The board shall adopt rules to provide for the administration of family law orders.”

Section 9. 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 ~~terminating service~~ *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 membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(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) The disability retirement benefit payable to a member must commence on the day following the member’s termination from *service employment*.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) 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 10. Section 19-2-909, MCA, is amended to read:

“19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant’s support obligation.

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

(a) “Execution” means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when

providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may ~~not~~ be established for an alternate payee, *but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.*

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The

alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

Section 11. Section 19-3-108, MCA, is amended to read:

"19-3-108. (Temporary) Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) ~~the payments or contributions made in lieu of wages for an individual subject 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, 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, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(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 or, with respect to~~ 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, 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.

19-3-108. (Effective July 1, 2005) Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) ~~the payments or contributions made in lieu of wages for an individual subject~~ 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, 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 or, with respect to~~ 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, 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 12. Section 19-3-112, MCA, is amended to read:

"19-3-112. Education fund established — allocation of employer contributions — educational program requirements. (1) (a) The board shall establish an education fund ~~and provide for educational programs for~~ *to be used to educate and inform* system members in a manner consistent with the provisions of this section.

(b) For the ongoing educational ~~services~~ and communication ~~programs~~ *services* established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of ~~covered payroll~~ *the compensation paid to all of the employer's employees who are members of the system* must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational ~~programs~~ *services* must provide system members with impartial and balanced information about plan choices, *benefits, and features*. The ~~programs~~ *services* must ~~involve multimedia~~ *be provided in a variety of formats*. Plan comparisons must, to the greatest extent possible, be based upon ~~real~~ *historical* rates of return on investments or *benefits* available in each retirement plan.

(b) If ~~an~~ educational ~~program~~ *is services* are conducted by a contractor, the board shall monitor the performance of the contract to ensure that the ~~program~~ *is services* are conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide ~~the~~ educational ~~services~~ *program provided for in subsection (3)* may not be the same entity contracted to provide other services for the defined contribution plan or the optional retirement program.

(3) The board shall ~~provide for an initial and~~ *offer* an ongoing transfer educational program to provide *new* system members with information necessary to make informed plan choice decisions. The ~~transfer educational~~ program must include but is not limited to information on:

(a) ~~determining~~ the amount of money available ~~to a member~~ to transfer to the defined contribution plan;

(b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;

(c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;

(d) the ~~aggregate~~ rate of return from investments in the defined contribution plan ~~and the period of time over which the aggregate rate of return~~ *that* must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan, *assuming the same time period in each plan*;

(e) the historical rates of return for the investment alternatives available in the defined contribution plan;

~~(f) the benefits and historical rates of return on investments available in deferred compensation plans or a plan under section 403(b) of the Internal Revenue Code for which the employee may be eligible determining retirement income needs and comparing determined retirement income needs to each plan's possible or expected benefit;~~

(g) use of supplemental retirement savings programs to enhance retirement income;

~~(g)~~(h) the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

~~(h)~~(i) payout options available in each of the retirement plans.

(4) ~~An ongoing~~ Ongoing educational services and communication program services must provide be provided after members of either plan have made their initial retirement plan choice. These services must continually provide members with information necessary to make informed decisions about choices within their chosen plan of membership and in preparation, alternatives within their chosen plan, and decisions necessary for retirement preparation. The program services must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) planning for retirement, including coordination of contributions and benefits with a deferred compensation plan under section 457 of the Internal Revenue Code or a plan under section 403(b) of the Internal Revenue Code supplemental retirement savings programs;

(d) significant plan changes; and

(e) contribution rates and plan funding status; and

~~(f) planning for retirement.~~

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a contracted plan vendor or vendors from providing system members with information and tools necessary to make informed decisions about the defined contribution plan or the optional retirement program and understand the available investment alternatives within the defined contribution plan or the optional retirement program and to appropriately manage their selected retirement plan."

Section 13. Section 19-3-201, MCA, is amended to read:

"19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of *chapter 2 and* this chapter:

(a) ~~The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, within 20 40 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract.~~

(b) ~~The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the provisions of the retirement system is compulsory for apply to all employees who are included under the contract and who are on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.~~

(c) ~~The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.~~

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract

until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.”

Section 14. Section 19-3-316, MCA, is amended to read:

“19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), ~~the amount of the employer contribution as a percentage of the employer’s covered payroll is~~ *shall pay as employer contributions 6.9% of the compensation paid to all of the employer’s employees, except those properly excluded from membership.* Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rate ~~applied to their monthly covered payrolls~~ under 19-3-319.”

Section 15. Section 19-3-318, MCA, is amended to read:

“19-3-318. Credit of ~~employer contribution contributions~~ made after ~~termination~~ member becomes inactive. ~~Employer contributions~~ *Contributions made on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system; they are considered to be inactive members,* as provided in 19-3-403(4), must be credited to the employer.”

Section 16. Section 19-3-319, MCA, is amended to read:

“19-3-319. State contributions for local government and school district employers. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation ~~of members employed by~~ *paid to all employees of* local government entities and school districts on and after July 1, 1997, *except those properly excluded from membership.* 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 payment is statutorily appropriated as provided in 17-7-502.”

Section 17. 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 shall become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their 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 who terminates service and does not take a refund of the member’s accumulated contributions 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) A~~ *An inactive member of the defined benefit plan with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund 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 who 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 service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who~~ *employment; or*

(b) ~~terminates one service employment but remains employed in another service or subsequently reenters service is an active member position covered by the system.~~

(5) *Time during which an employee of a school district is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits."*

Section 18. 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:

- (1) inmates of state 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, ~~solely for the purposes of making regular contributions, as permanently separated from service 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) ~~When~~ *The employees of an employer who has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or involving a multiemployer pension plan qualified by the internal revenue service for its employees, the employees 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) 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;

(6) 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 19. Section 19-3-412, MCA, is amended to read:

“19-3-412. Optional membership. (1) Except as provided in subsection (2), the following employees *and elected officials* in covered ~~employment may 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 within 180 days of commencement of their employment in the manner prescribed in subsection (3):*

(a) elected officials of the state or local governments 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 6 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) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator’s prior service credit. However, the legislator shall purchase at least 5 years of service credit or,

if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection (2)(b).

~~(c) (i) A member who is a local elected official and an active member on April 17, 2003, and who is working in the member's elected position less than 960 hours in a calendar year may, until January 1, 2004, decline optional membership with respect to the member's elected position.~~

(ii) A member who after April 17, 2003, is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) ~~(a) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. 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 within 180 days of the commencement of the employee's or elected official's employment.~~

~~(d) The employer shall file the statement with the board and retain a copy of the statement 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.

~~(4)(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.~~

~~(5)(7) Membership~~ Except as provided in subsection (2)(c), 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.

~~(6)(8) (a) An employee or elected official who declines membership while employed in~~ for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was a ~~member~~ *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. ~~However, if~~

(c) *If* the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

~~(7)~~(9) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

~~(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."~~

Section 20. Section 19-3-505, MCA, is amended to read:

"19-3-505. Purchase of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit *and membership service*. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase of service credit under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay ~~the amount~~ *all contributions* that the member ~~and the member's employer~~ would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment. ~~However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(c).~~

(c) The employer shall establish a policy as to the payment of retroactive employer contributions *or retroactive employer contributions and regular interest* and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(d) *If the employer establishes a policy under subsection (2)(c) of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service for the period of employment."*

Section 21. Section 19-3-908, MCA, is amended to read:

"19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or ~~whose service who~~ is involuntarily terminated *from service* because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal

service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in this section.

(3) An active member who is involuntarily terminated *from service* because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated *from service*, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination *from service*, eligible for service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service credit, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

Section 22. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in ~~19-3-1008(1)~~ 19-3-1008.

(2) An active member who is 60 years of age or older and who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3)."

Section 23. Section 19-3-1005, MCA, is amended to read:

"19-3-1005. Application for disability retirement benefit. The board shall grant a disability retirement benefit to any *active or inactive* member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application with the board. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed, by any other person on behalf of the member, or by the board upon its own motion. The application must be filed within 4 months after the member's termination from *service employment* unless the member is disabled continuously from the date of termination from *service employment* to the date of the application."

Section 24. Section 19-3-1015, MCA, is amended to read:

"19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees

with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer ~~terminates forfeits~~ any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the ~~member's service~~ *member* is considered, for the purposes of 19-2-602, to have ~~been discontinued terminated service~~ coincident with the commencement of the member's retirement benefit."

Section 25. Section 19-3-1204, MCA, is amended to read:

"19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a lump-sum death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of membership service.

(b) The designated beneficiary is a natural person.

(c) The designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the lump-sum death payment.

(2) ~~The A~~ designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a lump-sum *death* payment ~~of the member's account~~.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 26. 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. ~~The~~ 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 ~~reduced amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee’s death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board 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.*

(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 a benefit recipient or the recipient’s 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 a 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) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member’s optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member’s marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, designate a different contingent annuitant, or select a different option if:

(i) the contingent annuitant has died, in which case the optional benefit may revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, in which case 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.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 27. Section 19-3-2104, MCA, is amended to read:

"19-3-2104. Board powers and duties — rulemaking. (1) The board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable. The board may also exercise the powers and shall perform the duties provided in this chapter.

(2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules necessary for the implementation of this part and other applicable sections in chapters 2 and 3 of this title, ~~including rules concerning the following:~~

~~(a) matters necessary for the treatment of the plan as a qualified plan under applicable sections of the Internal Revenue Code;~~

~~(b) the treatment of dormant or inactive accounts;~~

~~(c) the security and privacy of information maintained by the board concerning a member's investments, as required by applicable law;~~

~~(d) minimum asset, reserve, insurance, or other security requirements intended to ensure the solvency of a contractor used by the board for investment services; and~~

~~(e) the commencement of benefits in the plan pursuant to this part and as provided in 19-2-908."~~

Section 28. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months

after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within 12 months after the member's rehire date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within 12 months of the member's hire date, elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of

the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

Section 29. Section 19-3-2112, MCA, is amended to read:

"19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights. (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer membership to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates ~~covered~~ employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates ~~covered~~ employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates ~~covered~~ employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the

optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

Section 30. Section 19-3-2114, MCA, is amended to read:

"19-3-2114. Amount available to transfer. (1) (a) For an employee who was a ~~system~~ *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 ~~credited~~ *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 8% compounded annual interest from the month that the contributions were received.

(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 8% compounded annual interest from the month that the contributions were received."

Section 31. Section 19-3-2116, MCA, is amended to read:

"19-3-2116. Vesting — mandatory termination of membership — forfeitures. (1) A member's contribution account includes the member's contributions and the income on those contributions and is vested from the date that the employee becomes a member of the plan.

(2) A member's employer contribution account includes the employer's contributions and the income on those contributions and is vested only when the member has a total of 5 years of membership service under the system.

(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates ~~covered employment~~ *service* after becoming a vested member may terminate plan membership as provided in 19-3-2123.

(5) A member who terminates ~~covered employment~~ *service* before becoming a vested member shall terminate plan membership as provided in 19-3-2123 and subject to 19-3-2126.

(6) If the member's employer contribution account is not vested upon termination of ~~covered employment~~ *plan membership, as provided in 19-3-2123*, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117."

Section 32. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) ~~Each plan member's retirement account must be credited with the~~ *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, ~~beginning on the plan's effective date,~~ of the employer contributions under 19-3-316 *received on or after July 1, 2002*, an amount equal to:

(a) 4.19% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; ~~and~~

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); ~~and~~

~~(3)(d) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.~~

~~(4)(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 33. Section 19-3-2121, MCA, is amended to read:

"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations. (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the ~~covered payroll~~ *compensation paid to all of the members in the defined benefit plan*, divided by the ~~covered payroll~~ *compensation paid to all of the members in the defined contribution plan*. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117~~(3)~~(2)(d) should be increased, the employer contribution to each member's account under 19-3-2117(2)(a) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117~~(3)~~(2)(d) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

Section 34. Section 19-3-2126, MCA, is amended to read:

"19-3-2126. Refunds — minimum account balance — adjustment by rule. (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account balance.

(2) Except as provided in 19-3-2142, a member who terminates ~~from~~ service and whose vested account balance is less than \$200 must be paid the vested account balance in a lump sum. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117. The payment must be made as soon as administratively feasible ~~after the member's termination~~ without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a member who terminates ~~from~~ service and whose vested account balance is between \$200 and \$5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible ~~after the member's termination~~. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

(4) (a) Except as provided in 19-3-2142, upon the written application of a ~~terminating~~ member *terminating service* whose vested account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.

(b) The direct rollover distribution must be paid directly to the eligible retirement plan.

(5) A member who terminates service with an account balance greater than \$5,000, whether vested or not, may remain in the plan.

(6) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

Section 35. Section 19-5-103, MCA, is amended to read:

"19-5-103. Call of retired judges and justices and inactive vested members for duty. (1) (a) If physically and mentally able, a retired judge or justice who has voluntarily retired after at least 8 years of service is subject to call for duty by the chief justice to aid and assist any district court or any water court under directions that the chief justice may give or to serve as water judge.

(b) When called, a retired judge's or justice's duties include the examination of the facts, cases, and authorities cited and the preparation of opinions for and on behalf of the court to which the judge or justice is called to serve. The opinions, when and if and to the extent approved by the court, may be ordered by the court to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any

duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) (a) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in responding to the call.

(b) In addition, a retired judge or justice is entitled to receive compensation in an amount equal to:

(i) the daily salary then currently applicable to the judicial position in which the duty is rendered for each day of duty rendered, up to a total of 180 days in a calendar year; and

(ii) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit that the retired judge or justice is receiving, if any.

(3) A judge or justice who is an inactive vested member, who has voluntarily ~~terminated~~ *discontinued* service as an active judge after 8 years of service, and who, by reason of age, is not eligible to receive a retirement benefit under this chapter may be called for duty as provided in subsection (1). A judge or justice called to duty under this subsection must be reimbursed as provided in subsection (2)(a) and compensated as provided in subsection (2)(b)(i) regardless of the number of days served in a calendar year.”

Section 36. Section 19-5-402, MCA, is amended to read:

“19-5-402. Member’s contribution. (1) Each ~~member shall contribute into the fund a sum equal to~~ *member’s contribution is* 7% of the member’s monthly compensation ~~beginning on the first day of the member’s term.~~

(2) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, as amended and applicable on July 1, 1991, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1991.

(3) The member’s contribution picked up by the employer is the member’s contribution for all purposes of the retirement system, except for the determination of a tax upon a distribution from the retirement system. The contributions must become part of the member’s accumulated contributions but must be accounted for separately from the previously accumulated contributions.

(4) The member’s contributions picked up by the employer are payable from the same source used to pay compensation to the member and must be included in the member’s monthly compensation. The employer shall deduct from the member’s compensation an amount equal to the amount of the member’s contributions picked up by the employer and remit the total of the contributions to the board.”

Section 37. Section 19-5-404, MCA, is amended to read:

“19-5-404. ~~Contributions by state~~ State employer contribution. (1) Except as provided in subsection (2), the state ~~of Montana~~ shall contribute ~~monthly to the pension trust fund a sum equal to~~ *pay as employer contributions* 25.81% of the compensation of ~~each member paid to all of the employer’s employees, except those properly excluded from membership.~~

(2) The state ~~of Montana~~ shall contribute monthly from the renewable resource grant and loan program account in the state special revenue fund to the

judges' pension trust fund an amount equal to 25.81% of the compensation paid to the chief water court judge. The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."

Section 38. Section 19-5-410, MCA, is amended to read:

"19-5-410. Application to purchase military service credit. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-5-411, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service* for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.~~

~~(b)~~ A member is not eligible to purchase *active* military service credit and membership service under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~ *(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~ *(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~ *(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-5-411, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."

Section 39. 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. ~~The~~ 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 ~~reduced-amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced-amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board 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.*

(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 a benefit recipient or the recipient's 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) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the 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

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case 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.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) 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.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 40. Section 19-5-902, MCA, is amended to read:

"19-5-902. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001 2005; and

~~(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.~~

(4) The board ~~shall~~ may adopt rules to administer the provisions of this section.

(5) The decision of a member who *previously* elected to participate under 19-5-901 or *this section* remains valid. The decision of a member who *previously* elected not to participate under 19-5-901 or *this section* may be reversed under this section."

Section 41. Section 19-6-301, MCA, is amended to read:

"19-6-301. Membership — inactive vested members — inactive nonvested members. (1) All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

(2) (a) ~~An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions~~ is an inactive vested member and retains the right to purchase service 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.

(3) (a) ~~An inactive member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund~~ 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 42. Section 19-6-402, MCA, is amended to read:

"19-6-402. Member's contribution. (1) (a) A member not covered under 19-6-710 shall contribute ~~into the pension trust fund~~ 9% of the member's ~~monthly~~ compensation.

(b) A member covered under 19-6-710 shall contribute ~~to the pension trust fund~~ 9.05% of the member's ~~monthly~~ compensation.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation as used to define the member's highest average compensation in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 43. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's State employer contribution. The state of Montana shall ~~annually contribute to the pension trust fund an amount equal to pay as employer contributions~~ 36.33% of the total compensation paid to the members ~~all of the employer's employees, except those properly excluded from membership~~ from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121."

Section 44. Section 19-6-505, MCA, is amended to read:

"19-6-505. Payment of retirement benefits. (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made ~~to the child's appointed guardian for the child's use pursuant to 19-2-803.~~

(4) If a retired member dies without a surviving spouse or dependent child, the member's designated beneficiary must be paid the amount, if any, of the retired member's accumulated contributions minus the total of any retirement benefits already paid from the member's account."

Section 45. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees.

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until ~~the member's service in the covered position is terminated. Upon termination of the member's service, the retired member becomes eligible in the next fiscal year succeeding~~ following the member's termination from service in the covered position.

(4) The amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4), and 61-3-562(1)(b) must be distributed proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

Section 46. 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 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.

(4) A sheriff or investigator 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).

(5) ~~(a) An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member’s accumulated contributions~~ 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 who terminates service and leaves the member’s accumulated contributions in the pension trust fund~~ 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 47. Section 19-7-403, MCA, is amended to read:

“19-7-403. Member’s contributions deducted. (1) ~~Each member shall contribute into the pension trust fund member’s contribution is 9.245% of the member’s monthly compensation, which must be deposited to the member’s credit in the pension trust fund.~~

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and salary as used to define the member's highest average compensation in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 48. Section 19-7-404, MCA, is amended to read:

"19-7-404. Employer contributions. (1) The employer shall pay ~~monthly~~ 9.535% of ~~each member's gross~~ *the compensation into the pension trust fund created by this chapter paid to all of the employer's employees, except those properly excluded from membership.*

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation."

Section 49. Section 19-7-801, MCA, is amended to read:

"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or 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.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credit under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the ~~appropriate reduction in the retirement benefit for an~~ optional retirement benefit, *if any*, elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credit, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be ~~made to the child's appointed guardian for the child's use paid pursuant to 19-2-803.~~ If there is more than one dependent child, upon ~~each~~ a child no longer qualifying as dependent under 19-9-104, ~~the that child's pro rata benefits to that child must cease and be paid to the remaining dependent children until all the children are no longer dependent.~~

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

Section 50. 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. ~~The~~ 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 ~~reduced amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board 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.*

(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 a benefit recipient or the recipient's 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) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the 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

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case 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.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) 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.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of the a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 51. Section 19-8-301, MCA, is amended to read:

"19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, ~~shall must~~ become and *shall* remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) wardens and deputy wardens employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock;

(h) motor vehicle inspectors employed by the department of justice; and

(i) drill instructors employed by the department of corrections.

(2) ~~(a) An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions~~ 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.

(3) ~~(a) An inactive member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund~~ 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 52. Section 19-8-502, MCA, is amended to read:

"19-8-502. Member's contribution. (1) ~~Each member is required to contribute into the pension trust fund~~ *member's contribution is* 10.56% of the member's ~~monthly compensation, which must be deposited to the member's credit in the pension trust fund.~~

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's highest average compensation in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 53. Section 19-8-504, MCA, is amended to read:

"19-8-504. State employer's Employer's contribution. ~~Each month, state employers~~ *The employer shall pay to the pension trust fund a sum equal to as employer contributions 9% of the total compensation paid to their covered all of the employer's employees, except those properly excluded from membership.* The department of fish, wildlife, and parks shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."

Section 54. 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, in lieu of all other benefits under this chapter, be converted into an optional retirement benefit that is the actuarial equivalent of the original benefit. ~~The~~ *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 ~~reduced amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the ~~reduced amount~~ *optional retirement benefit* after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—~~upon a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board 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.*

(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 a benefit recipient or the recipient's 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) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the 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

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case 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.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) 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.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 55. Section 19-9-301, MCA, is amended to read:

"19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) ~~(a) An inactive member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions~~ is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer contributions.

(5) ~~(a) An inactive member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund~~ 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 56. Section 19-9-703, MCA, is amended to read:

"19-9-703. Employer contribution. Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. ~~The employer's contribution, which must be paid monthly to the board, is~~ employer shall pay as employer contributions 14.41% of the compensation paid to all active members of the employer's employees, except those properly excluded from membership."

Section 57. Section 19-9-710, MCA, is amended to read:

"19-9-710. Member's contribution. (1) Except as provided in subsection (2), the regular contribution as a percentage of compensation of each active member first employed by an employer as a police officer:

- (a) on or before June 30, 1975, is 5.8%;
- (b) after June 30, 1975, is 7%;
- (c) after June 30, 1979, but before July 1, 1997, is 8.5%; and
- (d) on and after July 1, 1997, is 9%.

(2) A member covered under 19-9-1009 or 19-9-1010 shall ~~pay a contribution rate equal to~~ contribute 9% of the member's compensation received.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsections (1) and (2) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 58. Section 19-9-804, MCA, is amended to read:

"19-9-804. Amount of service retirement benefit — continuation of benefit after death of member. (1) A member who is eligible for service retirement must receive a retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) (a) Upon the death of a member receiving a service retirement benefit, the member's surviving spouse, if there is one, must receive a benefit equal to the amount of the member's benefit at the time of the member's death.

(b) If the member leaves one or more dependent children, then upon the member's death, if there is no surviving spouse, or upon the death of the surviving spouse, the member's surviving dependent child or children collectively if there are more than one must receive the same monthly payments that a surviving spouse would receive for as long as the child or one of the children remains a dependent child as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use paid pursuant to 19-2-803. If there is more than one dependent child, upon each a child no longer qualifying as dependent under 19-9-104, the that child's pro rata payments to that child must cease and be made to the remaining dependent children until all the children are no longer dependent."

Section 59. Section 19-9-902, MCA, is amended to read:

"19-9-902. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to a disability retirement benefit, regardless of the length of the member's service, commencing on the day following the member's termination from service employment."

Section 60. Section 19-9-905, MCA, is amended to read:

"19-9-905. Reinstatement upon termination of disability benefit. (1) (a) Except as provided in subsection (1)(b), a retired member whose disability retirement benefit is canceled as provided in 19-9-904 must be reinstated to the position held by the member immediately before retirement or to a position in a comparable pay and benefit category with duties within the member's capacity, whichever is first open. The board shall advise the employer that the disability retirement benefit has been canceled and that the member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the member may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the ~~retired~~ *inactive* member again becomes an active member by returning to service with an employer within 30 days following receipt of notice under 19-9-904, the member must be considered to have been continuously employed during the term of the member's disability. If the ~~retired~~ *inactive* member fails to become an active member by returning to service with an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement date must be determined accordingly."

Section 61. Section 19-9-1202, MCA, is amended to read:

"19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP accrual" means the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated ~~employment~~ *service* and retired, multiplied by each month of the DROP period that the participant completes, plus interest.

(3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

(4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated ~~employment~~ *service* and retired.

(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part."

Section 62. Section 19-9-1207, MCA, is amended to read:

"19-9-1207. Employment and benefits after DROP period. (1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.

(2) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(3) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating ~~covered employment~~ *service*, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service credit and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit."

Section 63. Section 19-9-1208, MCA, is amended to read:

"19-9-1208. Distribution of DROP benefit. (1) Upon termination of ~~covered employment~~ *service*, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

Section 64. 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 a membership application with the board within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later.

(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 who terminates service and does not take a refund of the member's accumulated contributions 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 who terminates service and leaves the member's accumulated contributions in the pension trust fund 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 election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system."

Section 65. Section 19-13-605, MCA, is amended to read:

"19-13-605. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available for this purpose. ~~The employer's contribution is~~ *employer shall pay as employer contributions* 14.36% of the total compensation paid to ~~members~~ *all of the employer's employees, except those properly excluded from membership*. All contributions are payable monthly to the board, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund."

Section 66. Section 19-13-802, MCA, is amended to read:

"19-13-802. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to receive a disability retirement benefit, regardless of the length of the member's service, beginning the first day after the date on which the member became disabled and terminated ~~service employment~~ *because of the disability.*"

Section 67. Section 19-13-805, MCA, is amended to read:

"19-13-805. Reinstatement upon termination of benefit. (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The employer may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the employer shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of ~~this~~ *the* notice, the member's termination of ~~employment~~ *service* is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly."

Section 68. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter. (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 with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) the volunteer firefighter's participation in the program is documented in the fire department records filed and maintained by the chief or supervisor; *and*

(c) the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more; ~~and~~

~~(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates."~~

Section 69. Section 19-17-407, MCA, is amended to read:

"19-17-407. Exemption from taxation and legal process. (1) The first \$3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

(2) ~~Except as provided in 19-2-907 and 19-2-909, benefits~~ *Benefits* received under this part are not subject to execution, garnishment, attachment, or any other process.”

Section 70. Section 19-19-205, MCA, is amended to read:

“19-19-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the public employees’ retirement board before ~~October~~ *September* 1 of each odd-numbered year all information requested by the public employees’ retirement board necessary to complete an actuarial valuation of the city’s police retirement fund. The valuation must consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation must be prepared by a qualified actuary selected by the public employees’ retirement board. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the public employees’ retirement board shall submit to the state treasurer a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed \$6,000 in any fiscal year. The state treasurer shall make payment to the actuary from the general fund.”

Section 71. Section 19-50-103, MCA, is amended to read:

“19-50-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter is in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, established by the state or a political subdivision, and no deferral of income under the deferred compensation program may affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the participant or the participant’s beneficiary because of ~~separation~~ *severance* from ~~service~~ *employment*, retirement, or unforeseeable emergency. For purposes of this chapter, any qualified private pension plans now in existence qualify.”

Section 72. Section 19-50-104, MCA, is amended to read:

“19-50-104. Eligibility to catch up — normal retirement age. ~~For~~ (1) *Except as provided in subsection (2), for* the purposes of determining a participant’s eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(1)(a) the age at which the participant is eligible to retire pursuant to the participant’s Title 19 retirement system because of the participant’s age, length of service, or both, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(2)(b) ~~60~~ 65 years of age if the participant is not a member of a Title 19 retirement plan or *system*, is a member of a defined contribution retirement plan, or is an independent contractor.

(2) *An eligible plan with participants that include qualified police or firefighters, as defined under 26 U.S.C. 415(b)(2)(H)(i)(I), may either:*

(a) designate a normal retirement age for the qualified police or firefighters that is no less than 40 years of age; or

(b) allow a qualified police or firefighter participant to designate a normal retirement age that is between 40 and 70 1/2 years of age.

(3) Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:

(a) police who are members of the municipal police officers' retirement system provided for in Title 19, chapter 9;

(b) police who are members of a local police retirement system provided for in Title 19, chapter 19;

(c) firefighters who are members of the firefighters' unified retirement system provided for in Title 19, chapter 13;

(d) firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter 18; and

(e) firefighters who are members of the defined benefit retirement plan of the public employees' retirement system provided for in Title 19, chapter 3."

Section 73. Section 44-1-515, MCA, is amended to read:

"44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions ~~he that the chief~~ has received, may determine at any time that an injured officer is able to perform light ~~police~~ duty consistent with ~~his the officer's~~ status as a law enforcement officer and may order ~~that the officer be~~ assigned to ~~such the~~ light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 ~~shall must~~ be discontinued.

(2) The chief may order ~~an that the~~ injured officer be transferred from the ~~highway patrol~~ position covered under the highway patrol officers' retirement system to another position within the department of justice that is not covered under the highway patrol officers' retirement system. An officer may decline to accept a transfer under this subsection with no loss of salary benefit."

Section 74. Section 44-1-518, MCA, is amended to read:

"44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 ~~shall must~~ be credited to the length of service computed for retirement purposes under 19-2-701.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all or any portion of the officer's length of service credited with the Montana highway patrol officers' retirement system must be transferred to the public employees' retirement system according to 19-2-715. ~~in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrol officers' retirement account must be transferred to the public~~

employees' retirement account in the officer's credit. The state's "~~adjusted contributions~~" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system."

Section 75. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 330

[HB 299]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR DEPARTMENT OF TRANSPORTATION EQUIPMENT STORAGE BUILDINGS; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. For the purposes of [sections 1 through 7], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, or furnishing for the projects authorized in [section 2].

(2) "Other funding sources" means money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. Appropriation of bond proceeds and other funds. The amount of \$5,100,000 is appropriated from other funding sources to the department of administration for capital projects, described as statewide equipment storage buildings for the department of transportation, contingent upon the respective authorization of general obligation long-range building program bonds by the 59th legislature and the sale of bonds by the board of examiners.

Section 3. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding \$5,100,000 for the capital projects described in [section 2] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 2005. The bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds.

Section 4. Agreement with department of transportation. The board of examiners and the department of transportation may enter into an agreement for the construction of equipment storage buildings, under which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, an amount, as determined by the state treasurer, that is sufficient to pay the principal and interest due on the bonds and notes from which the appropriation was made. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the

reserves not required for construction costs may be credited against the department's payment obligation. Payment by the department must be made from available funds.

Section 5. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 6. Capital projects — contingent funds. If the capital projects authorized in [section 2] are financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the department of transportation has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2007 biennium long-range building program presented to the 59th legislature.

Section 7. Legislative consent. The appropriation authorized in [section 2] constitutes legislative consent for the capital projects contained in [section 2] within the meaning of 18-2-102.

Section 8. Requirement for approval of state debt. Because [section 3] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 3]. If [section 3] is not approved by the required vote, [this act] is void.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 331

[HB 324]

AN ACT CREATING THE CRIME OF OBSTRUCTING HEALTH CARE FACILITY ACCESS.

WHEREAS, the Montana Legislature recognizes that access to health care facilities to obtain medical counseling and treatment is imperative for the citizens of this state; and

WHEREAS, the exercise of a person's right to protest or counsel against a medical procedure must be balanced against the right of other persons to obtain medical counseling and treatment in an unobstructed manner; and

WHEREAS, preventing the knowing obstruction of a person's access to medical counseling and treatment at a health care facility is a matter of statewide concern; and

WHEREAS, the Montana Legislature declares that it is appropriate and necessary to enact legislation prohibiting a person from knowingly obstructing another person's entry into or exit from a health care facility.

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

Section 1. Obstructing health care facility access. (1) A person commits the offense of obstructing health care facility access if the person knowingly obstructs, hinders, or blocks another person's entry into or exit from a health care facility. Commission of the offense includes but is not limited to knowingly approaching within 8 feet of a person who is entering or leaving a health care facility to give the person written or oral information, to display a sign, or to protest, counsel, or educate about a health issue, when the person does not consent to that activity and is within 36 feet of an entrance to or exit from the health care facility.

(2) A person convicted under this section shall be fined an amount not to exceed \$100.

(3) For purposes of this section, "health care facility" means an office of a medical practitioner, as defined in 37-2-101, or any other facility or entity that is licensed, certified, or otherwise authorized by law to administer medical treatment in this state.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, and the provisions of Title 45, chapter 8, apply to [section 1].

Approved April 21, 2005

CHAPTER NO. 332

[HB 346]

AN ACT ALLOWING CERTAIN RETIRED VOLUNTEER FIREFIGHTERS TO RETURN TO WORK WHILE CONTINUING TO RECEIVE A PENSION BENEFIT; PRESCRIBING ELIGIBILITY CRITERIA; AMENDING SECTIONS 19-17-102, 19-17-401, AND 33-22-136, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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 during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "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) "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) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

(8) "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

(9) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(10) "Member" means a volunteer firefighter who has service credited under this chapter.

(11) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(12) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

(13) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

(14) "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 any insurance required by law, including workers' compensation insurance.

(15) "Surviving spouse" means the spouse married to a member when the member dies.

(16) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(17) "Volunteer firefighter" means a person who is an active member of an eligible fire company, *except a retired member who has returned to voluntarily serve with a fire company as provided in 19-17-401(5)*, and is not compensated for services as a firefighter."

Section 2. 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, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (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 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) Except as provided in subsection (5):

(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) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) *A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire department without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit.*

Section 3. 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, *or a retired volunteer firefighter who voluntarily returns to serve with a fire company under 19-17-401(5)* 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 4. Coordination instruction. If Senate Bill No. 197 and [this act] are both passed and approved, then [this act] is void.

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 333

[HB 436]

AN ACT ALLOWING A SUBDIVIDER TO DONATE LAND TO A SCHOOL DISTRICT, SUBJECT TO APPROVAL OF THE LOCAL GOVERNING BODY AND ACCEPTANCE BY SCHOOL DISTRICT TRUSTEES, TO FULFILL PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; AND AMENDING SECTIONS 7-16-2324 AND 76-3-621, MCA.

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

Section 1. Section 7-16-2324, MCA, is amended to read:

“7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of chapter 8, part 25, and this section, lands dedicated to the public use for park or playground purposes under 76-3-621 ~~or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county~~ are considered county lands *unless conveyance to a governmental unit other than a county is provided by law or agreement.*

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under chapter 8, part 25, and this section.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county’s outdoor recreation and open space comprehensive plan;

(d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of the park or playground lands, giving the people of the county opportunity to be heard regarding the action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body for the action; and

(f) comply with any other applicable requirements under chapter 8, part 25.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication.”

Section 2. Section 76-3-621, MCA, is amended to read:

“76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), ~~and (6), and (7)~~ *through (8)* of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses

sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

~~(8)~~(9) For the purposes of this section:

(a) “cash donation” is the fair market value of the unsubdivided, unimproved land; and

(b) “dwelling unit” means a residential structure in which a person or persons reside.

~~(9)~~(10) A land donation under this section may be inside or outside of the subdivision.”

Approved April 21, 2005

CHAPTER NO. 334

[HB 440]

AN ACT PROVIDING THAT ADMINISTRATIVE RULES OF THE DEPARTMENT OF AGRICULTURE INCLUDE A REQUIREMENT THAT

THE OWNER OF AN ANHYDROUS AMMONIA TANK PLACE A LOCK ON THE TANK; PROVIDING THAT A VIOLATION FOR NOT INSTALLING A TANK LOCK MUST BE CONSIDERED A MINOR OFFENSE FOR A CERTAIN PERIOD OF TIME; PROVIDING FOR AN ANHYDROUS AMMONIA TANK LOCK PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 80-10-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Section 80-10-503, MCA, is amended to read:

“80-10-503. Rulemaking authority and requirements. (1) The department shall adopt rules for the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia facilities. ~~Such~~ The rules must be in substantial conformity with nationally recognized safety standards for the storage and handling of anhydrous ammonia. The rules ~~shall~~ must require the owner to place ~~his~~ the owner's name, ~~and~~ the owner's phone number, and a lock on ~~his~~ the owner's anhydrous ammonia tank or tanks. The department may adopt additional rules necessary for the protection and safety of persons employed in anhydrous ammonia facilities, persons using anhydrous ammonia, and the public.

(2) The rules must include a provision under which new or existing facilities may apply for a temporary or permanent variance from any requirement of the rules. The rules must provide criteria for granting or denying a variance request and must provide for written notice and public hearing on any variance request.

(3) The department shall coordinate its rulemaking activities with other executive branch agencies and departments by providing them with timely information on the adoption of the rules, inviting and encouraging their participation, giving due weight and consideration to their comments and testimony, and coordinating interdepartmental meetings on matters pertaining to the adoption of the rules.

(4) (a) *Subject to subsection (4)(b), for purposes of 80-10-303, a violation of the requirement for having a lock on an anhydrous ammonia tank must be considered a minor violation.*

(b) *If the department is not appropriated enough funds to purchase tank locks for all of the tanks owned by retail vendors in Montana, the department shall disburse the locks in a fair and equitable manner and keep a record of those who received locks and those who did not. Those that did not receive a lock may not be found in violation for the purposes of 80-10-303.”*

Section 2. Anhydrous ammonia tank lock program — purpose — account. (1) The purpose of the anhydrous ammonia tank lock program is to distribute high quality tank locks to retail vendors of anhydrous ammonia to prevent theft of anhydrous ammonia for the purpose of making methamphetamine.

(2) The department shall purchase and distribute anhydrous ammonia tank locks to retail vendors of anhydrous ammonia in Montana. The department shall ensure 100% distribution and shall encourage 100% use by June 30, 2007.

(3) Whenever possible, the Montana state university cooperative extension service is encouraged to promote the use of anhydrous ammonia tank locks by agriculture producers and retail vendors of anhydrous ammonia.

(4) There is an account in the state special revenue fund to the credit of the department for the purposes of this section. The department may accept donations from any private source and place the donations in the account. Money in the account must be expended by the department for implementing the anhydrous ammonia tank lock program.

Section 3. Appropriation. There is appropriated \$80,000 for the biennium ending June 30, 2007, from the general fund to the department of agriculture to fund the purchase and distribution of anhydrous ammonia locks.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 80, chapter 10, part 5, and the provisions of Title 80, chapter 10, part 5, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2005.

Section 6. Termination. [This act] terminates June 30, 2007.

Approved April 21, 2005

CHAPTER NO. 335

[HB 450]

AN ACT REVISING THE LAWS GOVERNING THE ADMINISTRATION OF STATE LAND; PROVIDING FOR CONSIDERATION OF CERTAIN LOCAL GOVERNMENT ORDINANCES AND RESOLUTIONS WHEN CERTAIN SALES OF LAND ARE PROPOSED OR MADE; AMENDING SECTIONS 77-1-202, 77-1-904, AND 77-2-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 77-1-202, MCA, is amended to read:

“77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The board shall administer this trust to:

(a) secure the largest measure of legitimate and reasonable advantage to the state; *and*

(b) *provide for the long-term financial support of education.-*

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

(3) When acquiring land for the state, the board shall determine the value of the land after an appraisal by a qualified land appraiser.”

Section 2. Section 77-1-904, MCA, is amended to read:

“77-1-904. Commercial leasing authorized. (1) State trust land may be leased for a term not to exceed 99 years for commercial purposes to the highest

and best bidder responding to a department request for proposals for commercial uses of a specified tract.

(2) The board may enter into contracts with lessees of state trust land for commercial purposes upon terms and conditions that the board may reasonably determine to be in the best interests of the beneficiary.

(3) A request for proposals for the commercial leasing of state trust land must reserve the board's right to reject any and all bids and the right to reoffer the tract for lease if the bids received are not acceptable to the board.

(4) *The board and the department, when preparing plans or proposals under this part, shall implement review criteria in consideration of the following local government provisions except to the extent that the provisions violate Article X, section 4 or 11, of the Montana constitution:*

(a) *a growth policy or a neighborhood plan adopted pursuant to Title 76, chapter 1;*

(b) *zoning regulations;*

(c) *subdivision review as provided in Title 76, chapter 3;*

(d) *annexation;*

(e) *plans for the extension of services; and*

(f) *other actions related to local planning."*

Section 3. Section 77-2-310, MCA, is amended to read:

"77-2-310. Certain lands to be platted before sale. (1) Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall that in the opinion of the board may be sold for residential or commercial purposes must before sale, at such time as the board may deem to be for the best interests of the state, at such time as the board may consider to be in the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places, and parks in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with ~~with~~ Except to the extent that the following provisions violate Article X, section 4 or 11, of the Montana constitution, the board and the department shall consider the ordinances of such the appropriate city or town or the resolutions of the appropriate county regarding the platting of additions thereto:

(a) *a growth policy or a neighborhood plan adopted pursuant to Title 76, chapter 1;*

(b) *zoning regulations;*

(c) *subdivision review as provided in Title 76, chapter 3;*

(d) *annexation;*

(e) *plans for the extension of services; and*

(f) *other actions related to local planning.*

(2) The board ~~must~~ shall cause correct maps and plats of such the lands to be made and recorded when so after being surveyed and not otherwise. No A fee shall may not be charged by the county recorder or by any city officer for filing or recording such the maps or plats when recorded on behalf of the state.

(2)(3) Before the lands so surveyed and laid off are offered for sale the same shall lands must be appraised, with a separate appraisal to be placed on each lot.

~~Such~~ The surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.”

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 336

[HB 451]

AN ACT AUTHORIZING ISSUANCE BY LOCAL GOVERNMENTS OF BONDS FOR THE CONSTRUCTION AND CONSTRUCTION ENGINEERING PHASES OF PROJECTS ON THE URBAN HIGHWAY SYSTEM; AUTHORIZING THE TRANSPORTATION COMMISSION TO ENTER INTO CONTRACTS WITH LOCAL GOVERNMENTS TO USE FEDERAL URBAN FUND APPORTIONMENT TO SECURE THE PAYMENT OF THE BONDS; AMENDING SECTION 60-2-127, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, 23 U.S.C. 122, as amended by section 311 of the National Highway System Designation Act of 1995 (NHS Act), makes bond-related costs eligible for federal reimbursement on any eligible federal-aid project; and

WHEREAS, under the NHS Act, states and local governments can issue bonds to fund federal-aid projects that are payable from future federal-aid highway funds; and

WHEREAS, these financing mechanisms are referred to as grant anticipation revenue vehicles (GARVEE) or grant anticipation notes (GANS); and

WHEREAS, the Montana Department of Transportation has funded urban transportation improvements through federal-aid highway funds apportioned to the urban highway system under section 60-3-211, MCA; and

WHEREAS, it is the intention of this legislation to allow eligible local governments to issue GARVEE bonds or GANS to construct approved urban projects and commit funds apportioned to the urban highway system under section 60-3-211, MCA, by the Department of Transportation to their repayment.

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

Section 1. Authorization of bonds. (1) Upon approval by the Montana transportation commission, a city, county, or consolidated city-county government may issue revenue bonds to finance the construction and construction engineering phases of projects on the urban highway system within its jurisdiction to:

(a) fund the share that the bond issuer might otherwise expend for proportionate matching of federal funds allocated for the construction of highways, roads, streets, or bridges;

(b) make a deposit to a reserve fund securing the bonds; and

(c) pay costs of issuance and sale of the bonds.

(2) The bonds may be authorized by a resolution adopted by the governing body of the bond issuer without need for authorization by the electors of the bond issuer. The resolution must establish the terms, covenants, and conditions of the

bonds. The resolution may authorize that the bonds be issued under and secured by a trust indenture between the issuer and a trustee, which may be a trust company or bank having the power of a trustee inside or outside the state. The bonds may be sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The bonds do not constitute and may not be included as an indebtedness or liability of the issuer for purposes of any statutory debt limitation, do not constitute general obligations, and may not be secured by the taxing power of the issuer.

(3) The bonds are payable from and secured by the grants or other funds payable to and received by the department of transportation and apportioned by the department of transportation to the issuer of the bonds for urban highway system improvements or for improvements conducted as provided in 15-70-101(2). In the resolution or the trust indenture providing for the issuance of the bonds, the governing body of the issuer shall irrevocably pledge and appropriate to the debt service fund from which the bonds are payable the funds apportioned or to be apportioned to the issuer by the department of transportation in an amount sufficient to pay the principal of and the interest on the bonds as due.

(4) Bonds may be issued under this section only if:

(a) the bonds are issued in principal amounts and on terms that provide that the amount of principal and interest due in any fiscal year on the bonds and on any other revenue bonds of the issuer outstanding and issued under this section does not exceed the amount of the revenue pledged to the payment of the bonds and to be received in that fiscal year as estimated by the governing body of the issuer in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not more than 20 years after the date of issuance of the bonds.

(5) Proceeds from the sale of the bonds must be used to fund urban highway system projects approved by the transportation commission through an agreement with the issuer in accordance with 60-2-127(4), and the proceeds to be used for the construction must be deposited with the department of transportation. The proceeds must be expended by the department of transportation in accordance with other applicable provisions of law.

(6) A city, county, or consolidated city-county government issuing bonds pursuant to this section shall certify to the director of the department of transportation and the director of the department of administration promptly upon the issuance of the bonds the principal amount and terms of the bonds and the amount of money required each fiscal year for the payment of principal and interest on the bonds.

(7) The powers conferred on a city, county, or consolidated city-county government by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local laws. To the extent that the provisions of this section are inconsistent with the provisions of any other general, special, or local law, the provisions of this section are controlling.

Section 2. Section 60-2-127, MCA, is amended to read:

“60-2-127. Allocation of funds for projects. (1) Each year, out of federal-aid highway funds available for construction purposes, the commission shall allocate a portion of the funds for projects located on:

(a) the national highway system;

- (b) the primary highway system;
- (c) the secondary highway system;
- (d) the urban highway system; and
- (e) state highways.

(2) In making allocations under subsection (1), the commission shall comply with all applicable provisions relating to the use of federal-aid highway funds contained in Title 23, U.S.C.

(3) Notwithstanding the allocations made available to the secondary and urban highway systems in subsection (1), the commission may, with the concurrence of the appropriate local officials, authorize the use of federal-aid highway funds allocated under subsections (1)(c) and (1)(d) for any project eligible under 23 U.S.C. 133(b) relative to the surface transportation program.

(4) *The commission may enter into an agreement with a city, county, or consolidated city-county government, under terms and conditions that the commission determines necessary, to allow the city, county, or consolidated city-county government recipient of urban funds apportioned under 60-3-211 to dedicate all or a portion of the urban fund apportionment to the retirement of the bonds authorized by [section 1].*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 7, part 1, and the provisions of Title 7, chapter 7, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2006.

Approved April 21, 2005

CHAPTER NO. 337

[HB 470]

AN ACT REQUIRING APPLICANTS TO PAY COSTS AND FEES FOR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS; AMENDING SECTIONS 75-1-202, 75-1-205, 75-1-207, 75-1-208, 75-2-104, 75-2-211, 75-10-922, 75-20-201, 75-20-216, 75-20-401, 75-20-406, 76-4-125, 82-4-122, 82-4-231, 82-4-337, 82-4-349, 82-4-427, 82-4-436, 85-2-124, AND 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 75-1-202, MCA, is amended to read:

“75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees ~~which shall~~ *that must* be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201 ~~and the agency has not made the finding under 75-1-205(1)(a).~~ An agency ~~must~~ *shall* determine ~~within 30 days after a completed application is filed~~ whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by ~~this part~~ *section within any statutory timeframe for issuance of the lease, permit,*

contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. The Except as provided in 85-2-124, the fee assessed under this part section shall may be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. No A fee may not be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.”

Section 2. Section 75-1-205, MCA, is amended to read:

“75-1-205. Use Collection and use of fees and costs. (1) *A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental impact statement is responsible for paying:*

(a) *the agency’s costs of preparing the environmental impact statement and conducting the environmental impact statement process if the agency makes a written determination, based on material evidence identified in the determination, that there will be a significant environmental impact or a potential for a significant environmental impact; or*

(b) *a fee as provided in 75-1-202 if the agency does not make the determination provided for in subsection (1)(a).*

(2) *Costs payable under subsection (1) include:*

(a) *the costs of generating, gathering, and compiling data and information that is not available from the applicant to prepare the draft environmental impact statement, any supplemental draft environmental impact statement, and the final environmental impact statement;*

(b) *the costs of writing, reviewing, editing, printing, and distributing a reasonable number of copies of the draft environmental impact statement;*

(c) *the costs of attending meetings and hearings on the environmental impact statement, including meetings and hearings held to determine the scope of the environmental impact statement; and*

(d) *the costs of preparing, printing, and distributing a reasonable number of copies of any supplemental draft environmental impact statement and the final environmental impact statement, including the cost of reviewing and preparing responses to public comment.*

(3) *Costs payable under subsection (1) include:*

(a) *payments to contractors hired to work on the environmental impact statement;*

(b) *salaries and expenses of an agency employee who is designated as the agency’s coordinator for preparation of the environmental impact statement for time spent performing the activities described in subsection (2) or for managing those activities; and*

(c) *travel and per diem expenses for other agency personnel for attendance at meetings and hearings on the environmental impact statement.*

(4) (a) *Whenever the agency makes the determination in subsection (1)(a), it shall notify the applicant of the cost of conducting the process to determine the scope of the environmental impact statement. The applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in 75-1-208(4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays the cost of the scoping process.*

(b) *If the agency decides to hire a third-party contractor to prepare the environmental impact statement, the agency shall prepare a list of no fewer than four contractors acceptable to the agency and shall provide the applicant with a copy of the list. If fewer than four acceptable contractors are available, the agency shall include all acceptable contractors on the list. The applicant shall provide the agency with a list of at least 50% of the contractors from the agency's list. The agency shall select its contractor from the list provided by the applicant.*

(c) *Upon completion of the scoping process and subject to subsection (1)(d), the agency and the applicant shall negotiate an agreement for the preparation of the environmental impact statement. The agreement must provide that:*

(i) *the applicant shall pay the cost of the environmental impact statement as determined by the agency after consultation with the applicant. In determining the cost, the agency shall identify and consult with the applicant regarding the data and information that must be gathered and studies that must be conducted.*

(ii) *the agency shall prepare the environmental impact statement within a reasonable time determined by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes any timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the agency shall prepare the environmental impact statement within any timeframe provided by statute or rule.*

(iii) *the applicant shall make periodic advance payments to cover work to be performed;*

(iv) *the agency may order work on the environmental impact statement to stop if the applicant fails to make advance payment as required by the agreement. The time for preparation of the environmental impact statement is tolled for any period during which a stop-work order is in effect for failure to make advance payment.*

(v) (A) *if the agency determines that the actual cost of preparing the environmental impact statement will exceed the cost set out in the agreement or that more time is necessary to prepare the environmental impact statement, the agency shall submit proposed modifications to the agreement to the applicant;*

(B) *if the applicant does not agree to an extension of the time for preparation of the environmental impact statement, the agency may initiate the informal review process under subsection (4)(d). Upon completion of the informal review process, the agreement may be amended only with the consent of the applicant.*

(C) *if the applicant does not agree with the increased costs proposed by the agency, the applicant may refuse to agree to the modification and may also provide the agency with a written statement providing the reason that payment of the increased cost is not justified or, if applicable, the reason that a portion of the increased cost is not justified. The applicant may also request an informal review as provided in subsection (4)(d). If the applicant provides a written statement pursuant to this subsection (4)(c)(v)(C), the agreement must be amended to require the applicant to pay all undisputed increased cost and 75% of the disputed increased cost and to provide that the agency is responsible for 25% of the disputed increased cost. If the applicant does not provide the statement, the agreement must be amended to require the applicant to pay all increased costs.*

(d) *If the applicant does not agree with costs determined under subsection (4)(c)(i) or proposed under subsection (4)(c)(v), the applicant may initiate the informal review process pursuant to 75-1-208(3). If the applicant does not agree to a time extension proposed by the agency under subsection (4)(c)(v), the agency*

may initiate an informal review by an appropriate board under 75-1-208(3). The period of time for completion of the environmental impact statement provided in the agreement is tolled from the date of submission of a request for a review by the appropriate board until the date of completion of the review by the appropriate board. However, the agency shall continue to work on preparation of the environmental impact statement during this period if the applicant has advanced money to pay for this work.

(5) All fees *and costs* collected under this part ~~shall~~ *must* be deposited in the state special revenue fund as provided in 17-2-102. All fees *and costs* paid pursuant to this part ~~shall~~ *must* be used as ~~herein~~ *provided in this part*. Upon completion of the necessary work, each agency ~~will~~ *shall* make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.”

Section 3. 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* ~~No~~ 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 ~~of this title~~.

(2) *The department may require payment of costs under 75-1-205(1)(a) by a person who files a petition under 75-20-201(5).”*

Section 4. Section 75-1-208, MCA, is amended to read:

“75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) *and* subsection (1)(b) *of this section*, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency’s environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law.

All time limits are measured from the date the agency receives a complete application. An agency has:

- (i) 60 days to complete a public scoping process, if any;
- (ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4), is required; and
- (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through

preimpact statement studies, separate impact statement evaluations, or permit processing procedures.”

Section 5. Section 75-2-104, MCA, is amended to read:

“75-2-104. Limitations — personal cause of action unabridged — venue. (1) This chapter may not be construed to:

(a) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(b) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permit holder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permit holder. All judicial challenges of permits for projects with a project cost, as determined ~~under 75-1-203 by the court~~, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.”

Section 6. Section 75-2-211, MCA, is amended to read:

“75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application ~~within:~~

(i) *within 180 days after the department's receipt of a filed application, as provided in subsection (8), ~~if the department prepares the environmental impact statement;~~ if the department prepares the environmental impact statement;*

(ii) *within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or*

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, *within* 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application ~~within:~~

(i) *within* 180 days after the department's receipt of a filed application, as provided in subsection (8), ~~if the department prepares the environmental impact statement; if the department prepares the environmental impact statement;~~

(ii) *within* 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, *within* 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 7. Section 75-10-922, MCA, is amended to read:

“75-10-922. Study, evaluation, and report on proposed facility. (1)

After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in *75-1-205(4)* and *75-1-208(4)(b)*, within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department’s studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.”

Section 8. Section 75-20-201, MCA, is amended to read:

“75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1)

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

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

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

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

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

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

(7) All judicial challenges of certificates for projects with a project cost, as determined ~~under 75-1-203~~ *by the court*, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or

increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 9. Section 75-20-216, MCA, is amended to read:

“75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

~~(a)~~ (a) the application is in compliance and is accepted as complete; or

~~(b)~~ (b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the board and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department’s studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department’s certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department’s area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports

to reimburse them for the costs of compiling information and issuing the required report.”

Section 10. Section 75-20-401, MCA, is amended to read:

“75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions — venue for challenging certificate issuance. (1) Notwithstanding any other law, a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined ~~under 75-1-203~~ *by the court*, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.”

Section 11. Section 75-20-406, MCA, is amended to read:

“75-20-406. Judicial review of board decisions. (1) A person aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined ~~under 75-1-203~~ *by the court*, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 12. 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, 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) 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 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 that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), 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 13. Section 82-4-122, MCA, is amended to read:

“82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application that must contain a reclamation plan for any preparatory work and any other information the department considers necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.”

Section 14. Section 82-4-231, MCA, is amended to read:

“82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and

the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the

department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

(viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)”

Section 15. Section 82-4-337, MCA, is amended to read:

“82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in *75-1-205(4)* and *75-1-208(4)(b)*, unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

- (i) sufficient bond has been submitted pursuant to 82-4-338;
- (ii) the information and certification have been submitted pursuant to 82-4-335(9); and
- (iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to conform to the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

(5) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(6) Applications for major amendments must be processed in the same manner as applications for new permits.

(7) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(8) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.”

Section 16. Section 82-4-349, MCA, is amended to read:

“82-4-349. Limitations of actions — venue. (1) Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permit holder or applicant must include the party to whom the license or permit was issued unless otherwise agreed to by the license or permit holder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined ~~under 75-1-203~~ *by the court*, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 17. Section 82-4-427, MCA, is amended to read:

“82-4-427. Hearing — appeal — venue. (1) A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board, if a written request is submitted to the board within 30 days of the department’s decision.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(3) An action to challenge the issuance of a permit pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(4) A judicial challenge to a permit issued pursuant to this part by a party other than the permit holder or applicant must include the party to whom the

permit was issued unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for projects with a project cost, as determined ~~under 75-1-203~~ *by the court*, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 18. Section 82-4-436, MCA, is amended to read:

“82-4-436. Plan amendments — venue. (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that continued operation under the terms of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

- (a) an identification of the existing plan or permit;
- (b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and
- (c) the text of the proposed amendment.

(4) The operator may, within 15 days of receipt of the department’s amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department’s amendment notice or until after the department director affirms or modifies the amendment if a review by the director is requested. A decision by the department director is subject to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project cost, as determined ~~under 75-1-203~~ *by the court*, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose

needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.”

Section 19. Section 85-2-124, MCA, is amended to read:

“85-2-124. Fees *Costs and fees* for environmental impact statements.

(1) Whenever the department determines that the filing of an application or a combination of applications for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act ~~and the application or combination of applications involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water and the application or combination of applications involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water,~~ the applicant shall follow the process and shall pay to the department the ~~fee costs or fees for the environmental impact statement as provided in Title 75, chapter 1, parts 1 and 2~~ prescribed in this section. The department shall notify the applicant in writing within 90 days of receipt of a correct and complete application or a combination of applications if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as provided in this section. The maximum fee that must be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to \$1 million; plus 1% of the estimated cost over \$1 million and up to \$20 million; plus 1/2 of 1% of the estimated cost over \$20 million and up to \$100 million; plus 1/4 of 1% of the estimated cost over \$100 million and up to \$300 million; plus 1/8 of 1% of the estimated cost over \$300 million. The fee payment of costs and fees for the environmental impact statement must be deposited in the state special revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application or applications. ~~Any amounts paid by the applicant but not actually expended by the department must be refunded to the applicant.~~

(3) ~~The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:~~

~~(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;~~

~~(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any contract;~~

~~(c) the use or nonuse of a fee or any part of a fee paid to the department by an applicant.~~

(4) ~~Any payments made to the department or any third party by an applicant under any contract must be credited against any fee that the applicant is required to pay under this section. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.~~

~~(5)(2)~~ A fee *Costs or fees* as prescribed by this section may not be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of compliance pursuant to the Montana Major Facility Siting Act and the appropriation or use of water involved in the application or applications for permit or approval has been or will be studied by the department pursuant to that act.

~~(6)~~ This section applies to all applications, pending or filed, for which the department has not commenced writing an environmental impact statement. This section does not apply to any application if the fee for the application would not exceed \$2,500.

~~(7)(3)~~ Failure to submit the *fee costs or fees* as required by this section voids the application or applications.

~~(8)(4)~~ The department may in its discretion rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement.”

Section 20. Section 85-2-310, MCA, is amended to read:

“85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, 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.

(3) The department may cease action upon an application for a permit 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 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.

(4) 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 (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) 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 ~~fee costs or fees~~, if any, ~~is are~~ not paid as required by 85-2-124.”

Section 21. Effective date. [This act] is effective on passage and approval.

Section 22. Applicability. [This act] applies to environmental impact statements on which the agency responsible for preparation commenced preparation after December 31, 2004.

Approved April 21, 2005

CHAPTER NO. 338

[HB 513]

AN ACT EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT FOR CONTRIBUTIONS TO AN ACCOUNT TO BE USED FOR PROVIDING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AND AMENDING SECTION 6, CHAPTER 590, LAWS OF 2003.

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

Section 1. Section 6, Chapter 590, Laws of 2003, is amended to read:

“**Section 6. Termination.** [This act] terminates January 1, ~~2006~~ 2008.”

Approved April 21, 2005

CHAPTER NO. 339

[HB 522]

AN ACT PROVIDING AN APPROPRIATION TO THE BOARD OF REGENTS FOR DISTRIBUTION TO MONTANA STATE UNIVERSITY-BOZEMAN TO CONDUCT A FEASIBILITY STUDY CONCERNING THE TRAINING OF MONTANA DENTAL STUDENTS AT MONTANA STATE UNIVERSITY AND THE UNIVERSITY OF WASHINGTON.

WHEREAS, it is commonly known that Montana suffers from a shortage of dentists, particularly in the more rural areas of the state; and

WHEREAS, the shortage of dentists in Montana has been so longstanding and is so acute that the survey of health professional shortage areas conducted by the Bureau of Health Professions in the U.S. Department of Health and Human Services classifies at least 27 of Montana's counties as "frontier"; and

WHEREAS, Montana's population of practicing dentists is growing older and concern exists in the dental profession in Montana that the supply of dentists is not being replenished; and

WHEREAS, for the medical profession, the state has created the Montana Rural Physician Incentive Program and the Montana Family Practice Residency Program, but no similar programs exist to bring new dentists into the state; and

WHEREAS, because Montana has no dental school of its own it must rely upon dental programs at other educational institutions to provide Montana with graduate dental students; and

WHEREAS, the University of Washington Dental School has proposed a plan whereby Montana resident students at Montana State University in Bozeman, Montana, would complete 1 year of dental training at Montana State University and then transfer to the University of Washington to complete their dental training; and

WHEREAS, under the proposed plan, students graduating from the University of Washington would return to Montana for clinical practice; and

WHEREAS, the proposal by the University of Washington could be coupled with a clinical requirement to bring more Montana graduate dental students back to Montana, in a manner similar to the existing program for physicians; and

WHEREAS, it would be necessary to conduct a feasibility study on the proposal made by the University of Washington, and that study would cost money that should be appropriated by the Montana Legislature as an investment in the future of dental practices and dental access in Montana.

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

Section 1. Appropriation for dental school feasibility study. (1) There is appropriated from the general fund to the board of regents for distribution to Montana state university-Bozeman \$5,000 for each of fiscal years 2006 and 2007 for the purposes of a study as provided in this section.

(2) The study must determine the feasibility of Montana state university making an agreement with the university of Washington dental school to have first-year dental students complete dental courses at Montana state university and then transfer to the university of Washington for completion of dental

education. The plan shall encourage the return of Montana graduates to Montana after completion of their dental education.

(3) A report on the study must be prepared by January 1, 2007. The regents shall present the report to the legislature detailing the manner in which the program would operate and its costs to Montana. The report must be distributed to the legislature in the manner provided in 5-11-210.

Approved April 21, 2005

CHAPTER NO. 340

[HB 591]

AN ACT CLARIFYING THE APPLICABILITY OF LOCAL ZONING REGULATIONS TO SAND AND GRAVEL OPERATIONS AND OPERATIONS THAT MIX CONCRETE OR BATCH ASPHALT; AMENDING SECTION 76-2-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-2-209, MCA, is amended to read:

“76-2-209. Effect on natural resources. (1) Except as provided in 82-4-431, ~~and 82-4-432, and subsection (2) of this section,~~ a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner ~~thereof of any mineral, forest, or agricultural resource.~~

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel ~~and or an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are~~ subject to the zoning regulations ~~adopted under this chapter~~ *may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.*

(3) *Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel, and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.”*

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

Approved April 21, 2005

CHAPTER NO. 341

[HB 666]

AN ACT RELATING TO COUNTY WATER AND SEWER DISTRICTS; AUTHORIZING PETITIONS BY ALL PROPERTY OWNERS FOR THE CREATION OF A DISTRICT, APPOINTMENT OF DIRECTORS, AND THE INCURRENCE OF INDEBTEDNESS; CLARIFYING THE EFFECT OF PROTESTS AGAINST A METHOD OF LEVYING SPECIAL ASSESSMENTS; CLARIFYING PROTEST REQUIREMENTS AND ASSESSMENT

PROCEDURES FOR CONDOMINIUM PROPERTY; AUTHORIZING THE ISSUANCE OF REVENUE BOND AND SPECIAL ASSESSMENT BOND INDEBTEDNESS WITHOUT AN ELECTION; CLARIFYING THE AUTHORITY TO ESTABLISH SUBDISTRICTS; AMENDING SECTIONS 7-13-2204, 7-13-2208, 7-13-2212, 7-13-2215, 7-13-2231, 7-13-2282, 7-13-2302, 7-13-2321, 7-13-2328, AND 7-13-2329, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-13-2204, MCA, is amended to read:

“7-13-2204. Petition to create water and/or sewer district. (1) A petition, which may consist of any number of separate instruments, ~~shall~~ *must* be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by ~~registered voters within the boundaries of the proposed district equal in number to either~~ at least 10% of the registered voters of the territory included in ~~such~~ *the* proposed district ~~or by the owners of all of the real property in the district.~~

(2) When the territory to be included in ~~such~~ *the* proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which ~~said~~ *the* territory lies. Each of ~~said~~ *the* petitions must be signed by at least 10% of the registered voters of the territory within ~~said~~ *the* county to be included within ~~such~~ *the* proposed district ~~or by the owners of all of the real property included in the proposed district.~~

(3) ~~Such~~ *A* petition to create a water and/or sewer district ~~shall~~ *must* set forth and describe the proposed boundaries of ~~such~~ *the* district and ~~shall~~ *prayer* require that the ~~same~~ *district* be incorporated under the provisions of *part 23 and this part and part 23.*”

Section 2. Section 7-13-2208, MCA, is amended to read:

“7-13-2208. Decision on petition — election required. (1) On the final hearing provided for in 7-13-2206, the board of county commissioners shall make any changes in the proposed boundaries within the county that are considered advisable and shall define and establish the boundaries. The board of county commissioners may not modify the boundaries in a manner that would exclude from the proposed district any territory that would ~~be benefited~~ *benefit* ~~by~~ from the formation of the district. Land that will not, in the judgment of the board of county commissioners, ~~be benefited~~ *benefit* ~~by~~ from the district may not be included within the proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall give notice of an election to be held in the proposed district for the purpose of determining whether ~~or not~~ the district is to be incorporated. The election must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(3) *An election is not required if the petition for the creation of the district is signed by the owners of all of the real property in the proposed district. If an election is not held, upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries as an organized county water and/or sewer district. The county clerk and recorder shall forward a certified copy of the order to the secretary of state.*”

Section 3. Section 7-13-2212, MCA, is amended to read:

“7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), ~~no an individual shall be~~ *is not* entitled to vote at any election under the provisions of *part 23 and this part and part 23* unless ~~such the~~ individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which ~~he the individual~~ proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of ~~such the~~ real property described in subsection (1) need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that ~~such the~~ elector is qualified if ~~he is~~ registered to vote in any state of the United States and files proof of ~~such~~ registration with the election administrator *at least 20 days prior to the election in which the individual intends to vote.*”

Section 4. Section 7-13-2215, MCA, is amended to read:

“7-13-2215. Certificate of incorporation from secretary of state. (1) Upon the receipt of the certificate referred to in 7-13-2214(2) *or the certified copy of the order referred to in 7-13-2208(3)*, the secretary of state shall, within 10 days, issue ~~his a~~ certificate reciting that the district (naming it) has been ~~duly~~ incorporated according to the laws of the state of Montana. A copy of ~~such the~~ certificate ~~shall must~~ be transmitted to and filed with the county clerk of the county or counties in which ~~such the~~ district is situated.

(2) From and after the date of ~~such a~~ certificate of incorporation from the secretary of state, the district named ~~therein shall in the certificate must be deemed considered~~ incorporated, with all the rights, privileges, and powers set forth in *part 23 and this part and part 23 and necessarily incident thereto.*”

Section 5. Section 7-13-2231, MCA, is amended to read:

“7-13-2231. District to be governed by board of directors. (1) At an election to be held within a district under the provisions of part 23 and this part and the laws governing general elections not inconsistent with part 23 and this part, the district shall elect a board of directors. The election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with the next regular or primary election. *If no electors reside in the district at a time when directors of the district are to be elected, the directors to be elected must be appointed in a certificate of appointment presented to the board of directors of the district, signed by the owners of all of the real property in the district, and containing the signed acceptance of the appointment by all of the directors.*

(2) The board of directors is the governing body of the district.”

Section 6. Section 7-13-2282, MCA, is amended to read:

“7-13-2282. Hearing on assessment—~~who considered owner—sufficient protest to bar proceedings.~~ (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 ~~the~~ 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 [section 11]*. 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 ~~of intention~~ 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 ~~of intention~~. *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 7. Section 7-13-2302, MCA, is amended to read:

"7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) ~~If from~~ for any ~~cause~~ reason the ~~revenues~~ revenue of the district ~~shall be~~ *is* inadequate to pay the interest or principal of any bonded debt as it becomes due, *exclusive of revenue or special assessment bonded indebtedness incurred pursuant to [section 12] or bonded indebtedness incurred to refund the revenue or special assessment bonded indebtedness without authorization at an election, or any other expenses or claims against the district, then the board of directors must shall,* (at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which ~~such~~ *the* district is located are required by law to levy the amount of taxes required for county or city and county purposes), furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either ~~of said purposes~~ *purpose*, together with a description of the lands benefited ~~thereby by the bonds~~, as stated by the board of directors in the resolution declaring the necessity to incur ~~such~~ bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of ~~such~~ *the* county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, ~~must shall~~:

(a) until any ~~such~~ bonded debt is fully paid, levy upon the *benefited* lands ~~so benefited and cause to be collected~~ *collect* the proportionate share to be borne by the land located in their county of a tax sufficient for the payment ~~thereof of the bonded debt~~, to be known as the district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and ~~cause to be collected~~ *collect* the proportionate share to be borne by the land located in their county of a tax sufficient for the payment ~~thereof of the bonded debt~~, to be known as the district water and/or sewer tax.

(3) ~~Such taxes~~ *Taxes* for the payment of any ~~such~~ bonded debt ~~shall~~ *must* be levied on the property benefited ~~thereby~~, as stated by the board of directors in the resolution declaring the necessity ~~therefor for the bonds~~, and all taxes for other purposes ~~shall~~ *must* be levied on all property in the territory comprising the district.”

Section 8. Section 7-13-2321, MCA, is amended to read:

“7-13-2321. Procedure to incur bonded indebtedness. (1) Whenever the board of directors considers it necessary for the district to incur a bonded indebtedness, other than for indebtedness to refund bonded indebtedness as provided for in ~~7-13-2331~~ *7-13-2332* or revenue or special indebtedness incurred pursuant to [section 12], it shall by resolution state the purpose for the proposed debt, the land within the district to be benefited, the amount of debt to be incurred, the maximum term for the proposed bonds before maturity, and the proposition to be submitted to the electors.

(2) *If no electors reside in the district at the time of adoption of the resolution or if the proposition is approved by all of the real property owners in the district to be benefited in a certificate of approval to be presented to the board of directors, the board of directors may incur the bonded indebtedness without an election. The board of directors may by resolution, at times that it considers proper, provide for the form and execution of the bonds and for their issuance.”*

Section 9. Section 7-13-2328, MCA, is amended to read:

“7-13-2328. Sufficient vote required to issue bonds. (1) (a) *When the board of directors canvasses the vote of a bond election, it shall determine the approval or rejection of the bond proposition as provided in subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election in the following manner:*

(i) *determine the total number of electors of the district who were qualified to vote at the bond election;*

(ii) *determine the total number of qualified electors who voted at the bond election;*

(iii) *calculate the percentage of qualified electors voting at the bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).*

(b) *When the calculated percentage in subsection (1)(a)(iii) is 40% or more, the bond proposition is approved and adopted if a majority of the votes are cast in favor of the proposition; otherwise it must be rejected.*

(c) *When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the bond proposition is approved and adopted if 60% or more of the votes have been cast in favor of the proposition; otherwise it must be rejected.*

(d) *When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must be rejected.*

(2) *If the canvass of the vote establishes the approval and adoption of the bond proposition* ~~If from such returns it appears that 60% or more of the votes cast on the question at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may by resolution, at such time or times as it considers proper, provide for the form and execution of the bonds and for the issuance of any part thereof the bonds.~~

Section 10. Section 7-13-2329, MCA, is amended to read:

“7-13-2329. Sale of bonds. The board of directors may sell or dispose of the bonds issued pursuant to *7-13-2321(2) or 7-13-2328* at such times or in such a manner ~~as that it may deem considers~~ to be to the public interest.”

Section 11. Protest procedures for property created as condominium — assessment of condominium property. (1) Whenever property created as a condominium is proposed to be assessed for costs of an improvement pursuant to 7-13-2280 and if the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest under 7-13-2282 is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the district in accordance with 7-13-2282 the following:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protect against the method of assessment.

(3) Each holder of title to a unit of a condominium that is proposed to be assessed for costs of a capital project is entitled to the passage of the resolution as provided in 7-13-2281, and if the assessments are levied, assessments must be levied against the units in the condominium as provided in subsection (4).

(4) Whenever property created as a condominium is to be subject to special assessments, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

Section 12. Issuance of revenue or special assessment bonds without election. (1) The board of directors of the district may authorize the issuance of bonds payable from all or a portion of the revenue of the district or from special assessments levied against benefited property in the district to

finance the acquisition, construction, improvement, or extension of any facilities of the district benefiting all or any portion of the district for other authorized corporate purposes of the district, to refund bonds issued for those purposes, to fund a debt service refund for the security of the bonds, to pay interest on the bonds during the estimated period of construction or improvement of facilities, and to pay costs of the bond issuance. Revenue or special assessment bonds issued under this section may be authorized by a resolution adopted by the board of directors of the district without need for authorization by the electors. Bonded indebtedness incurred pursuant to this section may not be secured by the levy of the deficiency tax provided in 7-13-2302 if not submitted to and approved by the electors of the district.

(2) Revenue or special assessment bonds authorized in subsection (1) may be sold as provided in 7-13-2329. The board of directors may, by resolution, pledge to the payment of the revenue bonds or special assessment bonds all or a portion of the rates, fees, tolls, rents, or other charges afforded by or special assessments levied in respect of facilities of the district, whether financed with bonds or other available funds of the district. The pledge may be made on a parity with or with a superior or subordinate lien to the pledge of the revenue to other bonded indebtedness of the district, subject to any covenants made with owners of outstanding bonds of the district. The board of directors may also make covenants for the benefit of the owners of the bonds as provided in 7-13-2301, but the revenue or special assessment bonds may not be secured by the bond tax levied pursuant to 7-13-2302 or any other taxing powers of the district. The bonds do not constitute and may not be included as an indebtedness or liability of the district for purposes of any statutory debt limitation but are subject to the limitations of this section.

(3) Bonds may be issued under this section only if:

(a) the bonds are issued in the principal amounts and on terms that stipulate that the amount of principal and interest due in any fiscal year on the bonds and any other revenue or special assessment bonds of the district and issued under this section do not exceed the amount of the revenue or special assessment pledged to the payment of the bonds and received in that fiscal year as estimated by the board of directors of the district in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not later than 40 years after the date of issuance of the bonds or the useful life of the project financed from the proceeds of the bonds, as determined by the board of directors.

Section 13. Establishment of subdistricts. (1) The board of directors may establish one or more subdistricts within a district to provide for and finance the cost of water or sewer projects, improvements, or extensions that would benefit land in the subdistrict but not other land in the district. Before establishing a subdistrict, the board shall conduct a public hearing on the establishment of the proposed subdistrict after 10 days' notice published in a newspaper of general circulation in the district. The notice of public hearing must contain a description of the subdistrict and the proposed water or sewer project and its estimated cost. After the public hearing, the board of directors may, by resolution, establish the subdistrict if it finds that it is in the best interests of the owners of the land in the subdistrict and the district wishing to establish the subdistrict, that the subdistrict constitutes all land in the district benefited by the proposed water or sewer project, and that the establishment of the subdistrict and the financing of water or sewer projects for the benefit of the

subdistrict will not violate any covenants of the district made with owners of outstanding bonds of the district.

(2) The board shall describe in the resolution establishing the subdistrict the land to be included in the subdistrict. The land does not need to be contiguous but must be located within the district and must constitute all of the land in the district benefited by the proposed water or sewer project.

(3) Following the establishment of a subdistrict, the board of directors may undertake and finance water or sewer projects, improvements, or extensions that benefit land in the subdistrict but not other land in the district, as provided in Title 7, chapter 13, parts 22 and 23, including but not limited to the incurrence of bonded indebtedness to finance costs and the levy of special assessments or the imposition of rates and charges, all subject to any covenants made with owners of outstanding bonds of the district. If general obligation bonds are to be issued to finance the costs of the projects, the subdistrict must be treated as the district for the purposes of 7-13-2331.

(4) The powers granted in this section are supplementary to the powers otherwise granted to county water and sewer districts.

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. Codification instruction. [Sections 11 through 13] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 11 through 13].

Section 16. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 342

[HB 684]

AN ACT EXEMPTING VEHICLES TRAVELING ON U.S. HIGHWAY 93 WITHIN 10 MILES OF THE BORDER BETWEEN MONTANA AND CANADA FROM THE WEIGHT LIMITS DETERMINED BY THE FEDERAL BRIDGE FORMULA; VOIDING THE ACT IF THE EXEMPTION WOULD RESULT IN A SANCTION OF FEDERAL HIGHWAY FUNDS; AND AMENDING SECTION 61-10-107, MCA.

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

Section 1. Section 61-10-107, MCA, is amended to read:

“61-10-107. Maximum gross weight. (1) (a) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. ~~The~~ *Except as provided in subsection (1)(b), the* maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The maximum gross weight allowed on a vehicle may not exceed the weight limits adopted by the department. The department shall adopt rules for weight limits based upon the most recent version of 23 CFR, part 658, appendix c, for vehicles operating in Montana.

(b) *A vehicle traveling on U.S. highway 93 from the border between Canada and the United States to 10 miles south of the border is subject to the specific maximum allowable gross weight limit provided in rules adopted by the department but is not subject to maximum gross weight limits determined by the formula in subsection (1)(a).*

(2) (a) Notwithstanding a vehicle's conformance with the requirements of subsection (1), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds for each inch of tire width.

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

(3) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 2. Contingent voidness. (1) If the department of transportation is notified by the federal highway administration that the exemption provided in [section 1(1)(b)] would result in a sanction of federal highway funds, [this act] is void.

(2) The department of transportation shall notify the code commissioner if it receives notification from the federal highway administration, as provided in subsection (1), and shall indicate the date that notification was received.

Approved April 21, 2005

CHAPTER NO. 343

[HB 698]

AN ACT ESTABLISHING A WARM WATER FISHERY ENHANCEMENT ACCOUNT; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ALLOW INDIVIDUALS TO MAKE VOLUNTARY CONTRIBUTIONS TO THE ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Warm water fishery enhancement account — source of funding — use of account. (1) There is an account to the credit of the department in the state special revenue fund established by 17-2-102 to be known as the warm water fishery enhancement account.

(2) There must be deposited in the account:

(a) a one-time transfer of money from the department in the amount of \$1,000 to start the fund;

(b) proceeds from voluntary contributions.

(3) Money in the account may be used only to fund the enhancement of warm water fisheries and habitats in Montana.

(4) The department shall adopt a process that allows individuals to donate money to the warm water fishery enhancement account by means of a voluntary contribution. Each individual must be provided an opportunity to contribute to the account at the time the individual purchases a fishing license.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 2, and the provisions of Title 87, chapter 3, part 2, apply to [section 1].

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

Approved April 21, 2005

CHAPTER NO. 344

[HB 759]

AN ACT ALLOWING REGISTRATION OF CERTAIN FLEETS FOR A 9-MONTH PERIOD; AND AMENDING SECTION 61-3-318, MCA.

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

Section 1. Section 61-3-318, MCA, is amended to read:

“61-3-318. Fleet registration period. (1) (a) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, a person owning or leasing a fleet may register its motor vehicles for a 6-month *or a 9-month* period, commencing from the date of original registration.

(b) A vehicle remaining in the fleet at the end of a 6-month *or 9-month* period must be reregistered for a minimum of 12 months.

(2) As used in this section, “fleet” means more than 25 automobiles or trucks having a rated capacity of three-quarters of a ton or less that are rented or offered for rental without drivers and that are designated by a rental owner as a rental fleet.”

Approved April 21, 2005

CHAPTER NO. 345

[HB 772]

AN ACT CREATING THE CATASTROPHICALLY INJURED WORKER'S TRAVEL ASSISTANCE ACT; ESTABLISHING A PROGRAM TO MATCH FUNDS RAISED BY NONPROFIT ORGANIZATIONS WITH UP TO \$2,500

FROM INSURERS TO ASSIST CATASTROPHICALLY INJURED WORKERS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY SHALL ADMINISTER THE PROGRAM; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 4] may be cited as the “Catastrophically Injured Worker’s Travel Assistance Act”.

Section 2. Purpose and intent. The purpose of [sections 1 through 4] is to assist catastrophically injured workers and their families by providing that funds raised by community service organizations may be matched with funds from insurers to help the workers and their families defray the costs of travel and lodging expenses incurred by family members or, if a family member is unavailable, by a person designated by the injured worker or approved by the insurer when traveling to be with the worker.

Section 3. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) “Catastrophically injured” means a physical injury or occupational disease incurred by a worker to the extent that treatment for the injury or occupational disease:

(a) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is in Montana but that is more than 100 miles from the worker’s place of residence; or

(b) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is located outside Montana; and

(c) occurs within 90 days of the accident or events causing the worker to be catastrophically injured.

(2) “Community service organization” means a community-based, nonprofit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code that raises money to assist the catastrophically injured worker.

(3) “Worker” has the meaning as provided in 39-71-118.

Section 4. Catastrophically injured worker’s travel assistance program — rulemaking authority. (1) Pursuant to subsection (3), the department of labor and industry shall establish criteria to certify that the funds raised by community service organizations are eligible for matching funds from an insurer.

(2) Money raised by community service organizations to pay travel expenses for a catastrophically injured worker pursuant to this section may not be used by community service organizations to require matching funds by an insurer in an amount greater than \$2,500 for each catastrophic injury.

(3) The department shall adopt rules to administer 39-71-704 and this section.

Section 5. 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 and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) 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 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 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 was 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)~~ Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

~~(f)~~(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)(f)~~ (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.

~~(g)~~(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) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. 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.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility or a critical access hospital pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (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 (7), 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 (7)(a) if the visit is for treatment requested by an insurer."

Section 6. Appropriation. There is appropriated \$1,000 from the worker's compensation administration fund to the department of labor and industry for the biennium ending June 30, 2007, to produce information to notify appropriate agencies and groups of the financial assistance available to catastrophically injured workers under the Catastrophically Injured Worker's Travel Assistance Act.

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 4].

Section 8. Effective date — applicability. [This act] is effective July 1, 2005, and applies to catastrophic injuries or occupational diseases occurring on or after July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 346

[SB 33]

AN ACT DELETING THE REQUIREMENT THAT THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS PREPARE AND PRESENT A UNIFIED BUDGET TO THE LEGISLATURE AND STANDING AND INTERIM COMMITTEES; AND AMENDING SECTION 2-15-225, MCA.

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

Section 1. Section 2-15-225, MCA, is amended to read:

“2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following members:

- (a) the attorney general provided for in 2-15-501;
- (b) the director of the department of public health and human services provided for in 2-15-2201;
- (c) the superintendent of public instruction provided for in 2-15-701;
- (d) the presiding officer of the Montana children’s trust fund board;
- (e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;
- (f) the administrator of the board of crime control provided for in 2-15-2006;
- (g) the commissioner of labor and industry provided for in 2-15-1701;
- (h) the director of the department of corrections provided for in 2-15-2301;
- (i) the state coordinator of Indian affairs provided for in 2-15-217;
- (j) the adjutant general of the department of military affairs provided for in 2-15-1202;
- (k) the director of the department of transportation provided for in 2-15-2501;
- (l) the commissioner of higher education provided for in 2-15-1506; and
- (m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members.

(2) The coordinating council shall perform the following duties:

- (a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;
- (b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;
- (c) study various financing options for prevention programs and services;
- (d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs;
- (e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs; *and*
- ~~(f) prepare and present to the legislature and to the appropriate standing and interim legislative committees a unified budget for state prevention programs, which must be published in the governor’s executive budget; and~~
- ~~(e)(f)~~ develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, “benchmark” means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Approved April 21, 2005

CHAPTER NO. 347

[SB 62]

AN ACT REQUIRING THAT DISPOSITIONS OF CONTESTED CASES UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT BE IN WRITING; AND AMENDING SECTIONS 2-4-603, 2-4-614, 2-4-623, AND 2-4-702, MCA.

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

Section 1. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition and hearings — waiver of administrative proceedings — recording and use of settlement proceeds.

(1) (a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. *A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.*

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then ~~utilize~~ use informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.”

Section 2. Section 2-4-614, MCA, is amended to read:

“2-4-614. Record — transcription. (1) The record in a contested case ~~shall~~ *must* include:

- (a) all pleadings, motions, *and* intermediate rulings;
- (b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and rulings ~~thereon on those objections~~;
- (e) proposed findings and exceptions;
- (f) any decision, opinion, or report by the ~~hearing~~ *hearings* examiner or agency member presiding at the hearing, *which must be in writing*;
- (g) all staff memoranda or data submitted to the ~~hearing~~ *hearings* examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part ~~thereof shall of the stenographic record must~~ be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription ~~shall~~ *must* be paid by the requesting party.”

Section 3. Section 2-4-623, MCA, is amended to read:

“2-4-623. Final orders — notification — availability. (1) A final decision or order adverse to a party in a contested case ~~shall must~~ be in writing ~~or stated in the record~~. A final decision ~~shall must~~ include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, ~~shall must~~ be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) Findings of facts ~~shall~~ *fact must* be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law ~~shall must~~ be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision ~~shall must~~ include a ruling upon each proposed finding.

(5) Parties ~~shall must~~ be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order ~~shall must~~ be delivered or mailed ~~forthwith~~ to each party and to ~~his~~ *the party's* attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. ~~No such~~ *An* agency decision or order is *not* valid or effective against any person or party, ~~nor may~~ *and it may not* be invoked by the agency for any purpose until it has been made available for public inspection as ~~herein~~ *required in this section*. This

provision is not applicable in favor of any person or party who has actual knowledge ~~thereof of the decision or order~~ or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.”

Section 4. Section 2-4-702, MCA, is amended to read:

“2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final *written* decision in a contested case is entitled to judicial review under this chapter. This section does not limit ~~utilization~~ *use* of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final *written* decision of the agency or, if a rehearing is requested, within 30 days after the *written* decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner’s principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers’ compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers’ compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency’s decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, ~~27-19-316, and~~ *through* 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be

required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.”

Approved April 21, 2005

CHAPTER NO. 348

[SB 80]

AN ACT PROHIBITING UNLAWFUL POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER BY A PERSON IN A MOTOR VEHICLE.

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

Section 1. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

- (a) in a locked glove compartment or storage compartment;
- (b) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;
- (c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;
- (d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or
- (e) in the immediate possession of a passenger:
 - (i) of a motor vehicle, including a bus, taxi, or limousine, that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or
 - (ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

Section 2. Definitions. As used in [section 1], the following definitions apply:

- (1) “Alcoholic beverage” means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.
- (2) “Bus” means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(3) “Camper” has the meaning provided in 61-1-129.

(4) “Highway” has the meaning provided in 61-1-201, including the shoulders of the highway.

(5) “Motor home” has the meaning provided in 61-1-130.

(6) “Motor vehicle” has the meaning provided in 61-1-102.

(7) “Open alcoholic beverage container” means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(8) “Passenger area” means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61 apply to [sections 1 and 2].

Approved April 21, 2005

CHAPTER NO. 349

[SB 86]

AN ACT DEFINING TERMS RELATED TO IMPLEMENTATION OF THE FEDERAL INDIAN CHILD WELFARE ACT; CLARIFYING THE ROLE OF A QUALIFIED EXPERT WITNESS IN CASES INVOLVING INDIAN CHILDREN IN PROCEEDINGS SUBJECT TO THE INDIAN CHILD WELFARE ACT; AND AMENDING SECTIONS 41-3-102, 41-3-205, 41-3-432, 41-3-437, AND 41-3-609, MCA.

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

Section 1. Section 41-3-102, MCA, is amended to read:

“41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) “Abandon”, “abandoned”, and “abandonment” mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) *In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).*

(e)(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

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

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "*Indian child*" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "*Indian child's tribe*" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) "*Indian custodian*" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(14) "*Indian tribe*" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

~~(11)~~(15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(12)~~(16) "Parent" means a biological or adoptive parent or stepparent.

~~(13)~~(17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(14)~~(18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(15)~~(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(16)~~(20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

~~(17)~~(21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

~~(18)~~(22) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

~~(19)~~(23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) "*Qualified expert witness*" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) *a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;*

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

~~(20)~~(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(21)~~(26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(22)~~(27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(23)~~(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(24)~~(29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

~~(25)~~(30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

~~(26)~~(31) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

~~(27)~~(32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

~~(28)~~(33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(28)~~ (33), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(29)~~(34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 2. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, *a qualified expert witness*, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 3. 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.

~~(b)~~(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, 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. 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. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(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 of counsel if indigent or if appointment 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 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."

Section 4. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) 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.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing 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.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) 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."

Section 5. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) 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."

Section 6. 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 band of Chippewa.

Approved April 21, 2005

CHAPTER NO. 350

[SB 110]

AN ACT IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT TO PROVIDE FOR IMPROVED COVERAGE OF THE HEALTH CARE AND RELATED NEEDS OF PARTICULAR GROUPS OF PERSONS; PROVIDING AUTHORITY FOR THE ESTABLISHMENT OF HEALTH INSURANCE FLEXIBILITY AND ACCOUNTABILITY DEMONSTRATION INITIATIVES AND OTHER DEMONSTRATION PROJECTS UPON APPROVAL OF WAIVER OF FEDERAL LAW; AMENDING SECTIONS 53-2-101 AND 53-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana public health care redesign project has studied health care and related services funded with state and federal money and has recommended the implementation of a set of measures to ensure that the expenditure of state and federal money more effectively benefits those citizens who are most in need of health care and other public assistance services; and

WHEREAS, the State of Montana has through the Montana public health care redesign project determined that the implementation of federally authorized health insurance flexibility and accountability (HIFA) demonstration initiatives or other demonstration projects under the waiver authority of section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, is in the best interest of the citizens of Montana; and

WHEREAS, the section 1115 waiver is intended to foster more appropriate use of state general fund money and federal money in funding state-administered health care and related services; and

WHEREAS, the section 1115 waiver would allow for the expansion of coverage for children covered under Title XXI of the Social Security Act, 42 U.S.C. 1397aa, et seq., state children's health insurance program (CHIP), for the expansion of Medicaid coverage for children who cannot be covered through CHIP because of limits on enrollment, for the implementation of new programs of assistance to a significant number of persons in Montana who are chronically unable to obtain health insurance coverage, and for improvements in the funding for and delivery of certain health care services, such as prescription drugs and mental health services to specific populations.

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

Section 1. Section 53-2-101, MCA, is amended to read:

"53-2-101. Definitions. Unless the context requires otherwise, in this chapter, 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) "Needy person" is one who is eligible for public assistance under the laws of this state.

(3) "Protective services" means services to children and adults to be provided by the department as permitted by Titles 41 and 53.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(5) "*Section 1115 waiver*" means an experimental, pilot, research, or demonstration project, subject to approval by the secretary of the U.S. department of health and human services, authorized by section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, for which certain requirements of the Social Security Act are waived.

(6) "*Section 1915 waiver*" means a waiver of certain medicaid requirements subject to approval by the secretary of the U.S. department of health and human services, under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, for the purposes of managing health care through restrictions on access to providers or for establishing programs of home- and community-based services."

Section 2. Section 53-4-601, MCA, is amended to read:

"53-4-601. Demonstration project — purpose. (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for financial assistance. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform in the financial assistance, food stamp, and medicaid programs.

(3) *The department is authorized, in accordance with the provisions of [section 3], to amend the demonstration project authorized under 53-6-101 and*

this part to expand the demonstration project to implement the purposes authorized in [section 3].”

Section 3. Social Security Act section 1115 waiver. (1) The department may pursue approval from the U.S. department of health and human services for implementation in Montana of a health insurance flexibility and accountability demonstration initiative and other demonstration projects through section 1115 waivers.

(2) The department may implement a demonstration project upon approval of a section 1115 waiver by the U.S. department of health and human services. The department may:

(a) coordinate a demonstration project with a program approved through a section 1915 waiver; or

(b) terminate and subsume in a new section 1115 waiver an existing managed care or access program approved through a section 1915(b) waiver, an optional state plan medicaid service authorized under 53-6-101, an optional state plan eligibility group authorized under 53-6-131, or an existing program approved by a section 1115 waiver, inclusive of the demonstration program authorized by 53-4-202 and Title 53, chapter 4, part 6, that is administered by the department.

(3) The department may amend the existing section 1115 demonstration project authorized in 53-4-601 and 53-6-101 to expand the demonstration project to implement the purposes of this section.

(4) The department may initiate and administer section 1115 waivers to more efficiently apply available state general fund money, other available state and local public and private funding, and federal money to the development and maintenance of medicaid-funded programs of health services and of other public assistance services and to structure those programs or services for more efficient and effective delivery to specific populations.

(5) (a) In establishing programs or services in a demonstration project approved through a section 1115 waiver, the department shall administer the expenditures under each demonstration project within the state spending authority that is available for that demonstration project. The department may limit enrollments in each program within a demonstration project, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through each program when the department determines that expenditures can be reasonably expected to exceed the available state spending authority.

(b) The department shall develop a contingency plan if there is a spending cap as a condition of the waiver and the spending cap is exceeded. The contingency plan must address the effects on new programs, services, or eligibility groups.

(6) The department may coordinate the state children’s health insurance program authorized under Title 53, chapter 4, part 10, with a section 1115 waiver for the purpose of increasing the state funding match available under the waiver and expanding the number of participants in the state children’s health insurance program.

(7) The department, subject to the terms and conditions of the section 1115 waiver:

(a) shall establish the eligibility groups based upon the funding principles stated in [LC 281];

(b) may provide medicaid coverage for one or more optional medicaid eligibility groups;

(c) may provide medicaid coverage for one or more specific populations of persons who are not within the federally authorized medicaid eligibility groups but who are within the requirements of subsection (8);

(d) may establish the service coverage, eligibility requirements, financial participation requirements, and other features for the administration and delivery of services to each section 1115 waiver eligibility group;

(e) shall set limits on the number of participants for each section 1115 waiver eligibility group;

(f) shall set limits on the total expenditures under each demonstration project; and

(g) shall set the limits on the total expenditures on the services to be provided to each section 1115 waiver eligibility group.

(8) The categories of persons that the department may consider for establishment as a section 1115 waiver eligibility group include but are not limited to:

(a) low-income parents of children who are eligible to participate in medicaid under 53-6-131 or in the state children's health insurance program authorized under Title 53, chapter 4, part 10;

(b) persons who because of low income and health-care needs are unable to procure health insurance coverage and are eligible to participate in a comprehensive health association plan authorized under Title 33, chapter 22, part 15;

(c) children who, because of limits on enrollment, may not be covered through the state children's health insurance program authorized under Title 53, chapter 4, part 10;

(d) children who are eligible to participate in the state children's health insurance program authorized under Title 53, chapter 4, part 10; and

(e) other specific groups of persons who are participants in programs or services funded solely or primarily through state general funds or who the department determines are in need of specific types of health care and related services, such as prescription drugs, reproductive health care, and mental health services, and are without adequate financial means to procure health insurance coverage of those needs.

(9) Children participating in a section 1115 waiver eligibility group or children who would be eligible to participate in the state children's health insurance program are subject to the eligibility criteria applicable under 53-4-1004, except as provided in subsection (10) of this section, for participation in the state children's health insurance program and must receive benefits as provided through the state children's health insurance program under 53-4-1005.

(10) (a) Except as provided in this subsection (10), the eligibility for the section 1115 waiver eligibility groups may not exceed 150% of the federal poverty level.

(b) The department may establish eligibility at greater than 150% but no more than 200% of the federal poverty level for any of the following groups established for purposes of a section 1115 waiver:

- (i) participants in the state children's health insurance program;
- (ii) participants in a group that may be covered under the state children's health insurance program;
- (iii) participants in a family planning program;
- (iv) participants in a group composed of persons previously served through a program funded with state general fund money and other nonmedicaid money; or
- (v) participants in a group composed of persons with a significant need for particular services that are not readily available to that population through insurance products or because of personal financial limitations.

(c) In establishing the eligibility criteria based upon federal poverty levels, the department shall select levels to ensure that the resulting expenditures will remain within the available funding and will conform with the terms and conditions of approval by the U.S. department of health and human services.

(d) The department may adopt additional programmatic and financial eligibility criteria for a section 1115 waiver eligibility group in order to appropriately define the subject population, to limit use for fiscal and programmatic purposes, to prevent improper use, and to conform the administration of the program with the terms and conditions of the section 1115 waiver.

(e) Eligibility criteria applicable to a section 1115 waiver eligibility group need not conform to the criteria applicable to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not encompassed within the demonstration project.

(11) (a) For each section 1115 waiver eligibility group, the department shall establish the program benefit or benefits to be available to the participants in the group.

(b) Program benefits may be in the form of:

(i) assistance in the payment of health insurance premiums for health care coverage through an employer or other existing group coverage available to the program enrollee;

(ii) assistance in the payment of health insurance premiums for health care coverage that meets a set of defined standards and limitations adopted by the department in consultation with the commissioner of insurance and obtained from participating private insurers or through self-insured pools;

(iii) premium purchase for insurance coverage on behalf of children who are 18 years of age or younger for the defined set of health care and related services adopted by the department for the state children's health insurance program authorized in Title 53, chapter 4, part 10; or

(iv) coverage of a defined set of health care and related services administered directly by the department on a fee-for-service basis.

(c) The department may limit the types of program benefits available to enrollees in a program. For programs in which the department provides for more than one type of program benefit, the department may require that enrollees, either as a whole or on an individual basis based on certain

circumstances, use certain types of program benefits in lieu of using other types of program benefits.

(d) The department shall, as necessary to maintain expenditures for a program within the available funding for that program, set monetary limitations on the total benefit amounts available on a periodic basis for an enrollee through that program, whether that benefit is in the form of premium assistance, premium purchase, or a set of covered services.

(12) The benefits for a section 1115 waiver eligibility group may be in the form of a defined set of covered services consisting of one or more of the mandatory and optional medicaid state plan services specified in 53-6-101 or other health-care related services. The department may select the types of services that constitute a defined set of covered services for a section 1115 waiver eligibility group. The department may provide coverage of a service not specified in 53-6-101 if the department determines the service to be appropriate for the particular section 1115 waiver eligibility group. The department may define the nature, components, scope, amount, and duration of each covered service to be made available to a section 1115 waiver eligibility group. The nature, components, scope, amount, and duration of a covered service made available to a section 1115 waiver eligibility group need not conform to those aspects of that service as defined by the department for delivery as a covered service to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not encompassed within a section 1115 waiver.

(13) The department may adopt financial participation requirements for enrollees in a section 1115 eligibility group to foster appropriate use among enrollees and to maintain the fiscal accountability of the program. The department may adopt financial participation requirements, including but not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The requirements may vary among the section 1115 waiver eligibility groups. In adopting financial participation requirements for enrollees selecting coverage as provided in subsection (11)(b)(iv), the department may not adopt cost-sharing amounts that exceed the nominal deductible, coinsurance, copayment, or similar charges adopted by the department to apply to categorically or medically needy persons for a service pursuant to the state medicaid plan.

(14) The department shall adopt rules as necessary for the implementation of a section 1115 waiver. Rules may include but are not limited to:

- (a) designation of programs and activities for implementation of a section 1115 waiver;
- (b) features and benefit coverage of the programs;
- (c) the nature, components, scope, amount, and duration of each program service;
- (d) appropriate insurance products and coverage as benefits;
- (e) required enrollee eligibility information;
- (f) enrollee eligibility categories, criteria, requirements, and related measures;
- (g) limits upon enrollment;
- (h) requirements and limitations for service costs and expenditures;

(i) measures to ensure the appropriateness and quality of services to be delivered;

(j) provider requirements and reimbursement;

(k) financial participation requirements for enrollees;

(l) use measures; and

(m) other appropriate provisions necessary for administration of a demonstration project and for implementation of the conditions placed upon approval of a section 1115 waiver by the U.S. department of health and human services.

(15) The department shall administer the programs and activities that are subject to a section 1115 waiver in accordance with the terms and conditions of approval by the U.S. department of health and human services. The department may modify aspects of established programs and activities administered by the department as may be necessary to implement a section 1115 waiver as provided in this section.

(16) The department may seek an initial duration and durational extensions for a section 1115 waiver as the department determines appropriate for demonstration and fiscal considerations.

(17) The department shall provide a report to the legislature, as provided in 5-11-210, on the conditions of approval and the status of implementation for each section 1115 waiver approved by the U.S. department of health and human services. For any proposed section 1115 waiver not approved by the U.S. department of health and human services, the department shall provide to the next legislative session a report on the basis for disapproval and an analysis of the fiscal costs and programmatic impacts of serving the persons within the proposed section 1115 waiver eligibility groups through eligibility under one of the optional medicaid eligibility categories established in federal law and authorized by 53-6-131.

(18) The department shall present a section 1115 waiver proposal to the appropriate medicaid advisory council, which must include consumer advocates, prior to the submission of the proposal to the federal government.

(19) The department shall present a section 1115 waiver proposal to the house appropriations committee or, during the interim, the children, families, health, and human services interim committee for review and comment at a public hearing prior to the submission of the proposal to the federal government for formal approval and shall also present the section 1115 waiver after final approval from the federal government.

(20) (a) The department shall provide for a public comment period on the proposed section 1115 waiver at least 60 days before the submission of the section 1115 waiver application to the federal government for formal approval.

(b) The department shall give notice of the proposal by announcing the pending submittal, stating its general purpose, and informing the public that information on the proposal is available on the department's website.

(c) The department shall provide for public comment through electronic means or mail and shall provide for a public forum in at least one location at which members of the public can submit views on the proposal. The department shall consider comments received and make any appropriate changes to the waiver request before submitting it to the federal government.

(d) The department shall post on its website the waiver concept paper, formal correspondence regarding a waiver proposal, and the final approved waiver, including documents received from the center for medicare and medicaid services.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 2, part 2, and the provisions of Title 53, chapter 2, part 2, apply to [section 3].

Section 5. Coordination instruction. If Senate Bill No. 41 is not passed and approved, then the bracketed language in [section 3] is void.

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

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 351

[SB 122]

AN ACT REGULATING THE TRANSFER OF A BENEFICIARY'S STRUCTURED SETTLEMENT PAYMENT RIGHTS; REQUIRING DISCLOSURE AND APPROVAL OF A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY PRIOR TO TRANSFER; OUTLINING OBLIGATIONS AFTER A TRANSFER; PLACING A CONDITION ON ADDITIONAL TRANSFERS; PROVIDING FOR JURISDICTION AND NOTICE; PROHIBITING WAIVER OF PROVISIONS; PROVIDING CONDITIONS FOR CONTINGENT PAYMENTS; ASSIGNING RESPONSIBILITY FOR COMPLIANCE; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 12] may be cited as the "Structured Settlement Protection Act".

Section 2. Definitions. As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Consideration" has the meaning provided in 28-2-801.

(3) "Dependent" means a payee's spouse, a minor child of the payee, or any person for whom the payee is legally obligated to provide support, including spousal maintenance.

(4) "Discounted present value" means the present value of future payments determined by discounting the future payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.

(5) "Gross advance amount" means the sum payable to the payee or to the payee's account as consideration for a transfer of a structured settlement

payment right before any reduction for a transfer expense or any other deduction is made from the sum.

(6) "Independent professional advice" means advice of an attorney, a certified public accountant, an actuary, or any licensed professional adviser.

(7) "Interested party" means, with respect to a structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive a payment after the payee's death, the annuity issuer, the structured settlement obligor, or any other party that has a continuing right or obligation under the structured settlement.

(8) "Net advance amount" means the gross advance amount minus the aggregate amount of the actual and estimated transfer expenses required to be disclosed under [section 3(5)].

(9) "Payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of the payment rights.

(10) "Periodic payment" includes both a recurring payment and any scheduled future lump-sum payments.

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment, as defined for federal tax purposes, of the liability to make periodic payments under a structured settlement.

(12) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

(13) "Settled claim" means the original tort claim.

(14) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(15) "Structured settlement agreement" means the written agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(16) "Structured settlement obligor" means, with respect to a structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(17) "Structured settlement payment right" means the right to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, when:

(a) (i) the payee is domiciled in this state; or

(ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;

(b) a court or responsible administrative authority in this state approved the structured settlement agreement; or

(c) the structured settlement agreement is expressly governed by the laws of this state.

(18) "Terms of the structured settlement" means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, or any order or other

approval of a court or responsible administrative authority or other government authority that authorized or approved the structured settlement.

(19) (a) "Transfer" means a sale, assignment, pledge, hypothecation, or other alienation or encumbrance of a structured settlement payment right made by a payee for consideration.

(b) The term does not include the creation or perfection of a security interest in a structured settlement payment right under a blanket security agreement entered into with an insured depository institution in the absence of any action:

(i) to redirect the structured settlement payment to the insured depository institution or its agent or successor in interest; or

(ii) to otherwise enforce the blanket security interest against the structured settlement payment right.

(20) "Transfer agreement" means the agreement providing for a transfer of a structured settlement payment right.

(21) (a) "Transfer expenses" means all expenses of a transfer that are:

(i) required under the transfer agreement to be paid by the payee; or

(ii) deducted from the gross advance amount, including without limitation any court filing fee, attorney fee, escrow fee, lien recordation fee, judgment and lien search fee, finder's fee, commission, and other payments to a broker or other intermediary.

(b) Transfer expenses do not include a payee's preexisting obligations that are payable on the payee's account from the proceeds of a transfer.

(22) "Transferee" means a party acquiring or proposing to acquire a structured settlement payment right through a transfer.

Section 3. Disclosure to payee. No less than 3 days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a written disclosure statement separate from the transfer agreement that sets forth in bold type no smaller than 14 points:

(1) the amounts and the due dates of the structured settlement payment to be transferred;

(2) the aggregate amount of the amounts in subsection (1);

(3) the discounted present value of the payments to be transferred, which must be identified as:

(a) the calculation of the present value of the transferred structured settlement payment under federal standards for valuing annuities; and

(b) the amount of the applicable federal rate used in calculating the discounted present value;

(4) the gross advance amount;

(5) an itemized list of all applicable transfer expenses, other than attorney fees and related disbursements, based on the transferee's best estimate of the amount of fees and disbursements payable in connection with the transferee's application for approval of the transfer;

(6) the net advance amount;

(7) the amount of any penalty or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee; and

(8) a statement that the payee has the right to cancel the transfer agreement without penalty or further obligation no later than the third business day after the date on which the payee signs the agreement.

Section 4. Transfer of structured settlement payment right — conditions. A direct or indirect transfer of a structured settlement payment right is not effective and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee of a structured settlement payment right unless a final court order or order of a responsible administrative authority has approved the transfer in advance based on written findings by the court or responsible administrative authority that:

(1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, if any;

(2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and either has received independent professional advice or knowingly waived independent professional advice in writing; and

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

Section 5. Obligations after transfer. After the transfer of a structured settlement payment right pursuant to [sections 1 through 12]:

(1) the structured settlement obligor and the annuity issuer are discharged and released from liability for the transferred payments to all parties except to the transferee;

(2) the transferee is liable to the structured settlement obligor and the annuity issuer:

(a) if the transfer contravenes the terms of the structured settlement for any tax incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(b) for any other liability or cost, including reasonable costs and attorney fees, arising:

(i) from compliance by the structured settlement obligor and annuity issuer with the order of the court or responsible administrative authority; or

(ii) as a consequence of the transferee's failure to comply with [sections 1 through 12]; and

(3) neither the structured settlement obligor nor the annuity issuer may be required to divide a periodic payment between a payee and a transferee or assignee or between two or more transferees or assignees.

Section 6. Additional transfers. After the transfer of a structured settlement payment right pursuant to [sections 1 through 12], any further transfer by the payee is subject to all of the requirements of [sections 1 through 12].

Section 7. Jurisdiction — notice. (1) A transferee may apply under [sections 1 through 12] for approval of a transfer of a structured settlement payment right:

(a) in the county in which the payee resides;

(b) in the county in which the structured settlement obligor or the annuity issuer maintains a principal place of business; or

(c) in any court or before any responsible administrative authority that approved the structured settlement agreement.

(2) Not less than 20 days prior to a scheduled hearing on an application for approval of a transfer of a structured settlement payment right under [section 4], the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for an authorized transfer. The notice must include the following:

- (a) a copy of the transferee's application;
- (b) a copy of the transfer agreement;
- (c) a copy of the disclosure statement required under [section 3];
- (d) a listing of each of the payee's dependents, if any, together with the age of each dependent;
- (e) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application either in person or by counsel by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (f) notification of the time and the place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed. The filing deadline may not be less than 15 days after the transferee's notice has been served.

Section 8. Waiver not allowed. A payee may not waive the provisions of [sections 1 through 12].

Section 9. Disputes — entry of judgment. (1) A transfer agreement entered into on or after [the effective date of this act] by a payee who resides in this state must provide that disputes under the transfer agreement, including a claim that the payee has breached the agreement, must be determined in this state under the laws of this state.

(2) A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

Section 10. Contingent payment conditions. A transfer of a structured settlement payment right may not extend to a payment that is contingent upon the life of a payee unless prior to the date on which the payee signs the transfer agreement the transferee has established and agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

- (1) periodically confirming the payee's survival; and
- (2) giving the annuity issuer and the structured settlement obligor prompt written notice upon the payee's death.

Section 11. Responsibility for compliance — liability. (1) Compliance with the requirements in [section 3] and fulfillment of the conditions in [section 4] are the sole responsibility of the transferee in any transfer of a structured settlement payment right. Neither the structured settlement obligor nor the annuity issuer bears responsibility for or liability arising from noncompliance with [section 3] or failure to fulfill the conditions of [section 4].

(2) A payee who proposes to make a transfer of a structured settlement payment right may not incur a penalty, forfeit an application fee or other payment, or otherwise incur any liability to the proposed transferee or any

assignee based on a failure of a transfer agreement to satisfy the conditions of [sections 1 through 12].

Section 12. Construction. [Sections 1 through 12] may not be construed to authorize a transfer of a structured settlement payment right in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to [the effective date of this act] is valid or invalid.

Section 13. Applicability. [This act] applies to any transfer of structured settlement payment rights under a transfer agreement executed on or after October 1, 2005.

Approved April 21, 2005

CHAPTER NO. 352

[SB 124]

AN ACT ALLOWING MONEY IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO BE USED TO PAY THE COSTS OF ELIGIBLE PROJECTS ON AN INTERIM BASIS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 90-6-715, MCA, is amended to read:

“90-6-715. (Temporary) Special revenue account — use. (1) The treasure state endowment regional water system special revenue account may be used to:

(a) provide matching funds to plan and construct regional drinking water systems in Montana; ~~and to~~

(b) provide funding of administrative expenses for state and local entities associated with regional drinking water systems; *or*

(c) *pay the costs of eligible projects on an interim basis pending the receipt of grant and loan funds by those systems or entities.* Except for the administrative expenses *and payment of the costs of eligible projects on an interim basis* provided for in this subsection, each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710.

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural

residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of natural resources and conservation for eligible projects. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)”

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

Approved April 21, 2005

CHAPTER NO. 353

[SB 127]

AN ACT FACILITATING THE IMPLEMENTATION OF CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT REGARDING PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; REVISING THE STATUTES AUTHORIZING PROGRAMS FOR HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; AUTHORIZING THE LONG-TERM CARE PREADMISSION SCREENING PROCESS; REMOVING AN INAPPROPRIATE APPLICATION OF MEDICAID STATE PLAN AUTHORITY TO THE PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES AND A REQUIREMENT FOR REPORTING COSTS OF PROVIDING HOME AND COMMUNITY-BASED SERVICES TO PERSONS CURRENTLY LIVING IN ASSISTED LIVING FACILITIES; AMENDING SECTIONS 53-6-101, 53-6-401, AND 53-6-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-6-101, MCA, is amended to read:

“53-6-101. Montana medicaid program — authorization of services.

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., ~~as may be amended~~. The department of ~~public health and human services~~ shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians’ services;

- (f) nurse specialist services;
 - (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
 - (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
 - (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
 - (j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
 - (k) health services provided under a physician's orders by a public health department; and
 - (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).
- (3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:
- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
 - (b) home health care services;
 - (c) private-duty nursing services;
 - (d) dental services;
 - (e) physical therapy services;
 - (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;
 - (g) clinical social worker services;
 - (h) prescribed drugs, dentures, and prosthetic devices;
 - (i) prescribed eyeglasses;
 - (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
 - (k) inpatient psychiatric hospital services for persons under 21 years of age;
 - (l) services of professional counselors licensed under Title 37, chapter 23;
 - (m) hospice care, as defined in 42 U.S.C. 1396d(o);
 - (n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
 - (o) services of psychologists licensed under Title 37, chapter 17;
 - (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
 - (q) any additional medical service or aid allowable under or provided by the federal Social Security Act.
- (4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance

under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the ~~department of public health and human services~~ may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

~~(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.~~

~~(13) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."~~

Section 2. Section 53-6-401, MCA, is amended to read:

"53-6-401. Definitions. As used in this part, the following definitions apply:

~~(1) "Community based medicaid services" means those long term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.~~

~~(2)~~(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "*Home and community-based services*" means, as provided for in section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and regulations implementing that statute, long-term medical, habilitative, rehabilitative, and other services provided in personal residences or in community settings and funded by the department with medicaid money.

(3) "*Level-of-care determination*" means an assessment of a person and the resulting determination establishing whether long-term care facility services to be provided to the person are appropriate to meet the health care and related circumstances and needs of the person.

~~(3)~~(4) "Long-term care facilities facility" means facilities a facility that ~~are~~ is certified by the department, as provided in 53-6-106, to provide skilled or intermediate nursing care services, including intermediate nursing care services for persons with developmental disabilities or, for the purposes of implementation of medicaid-funded programs of home and community-based services, that is recognized by the U.S. department of health and human services to be an institutional setting from which persons may be diverted through the receipt of home and community-based services.

~~(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.~~

~~(5)~~(5) "Long-term care preadmission screening and resident review" means, an evaluation that results in a determination as to in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r, a process conducted according to a specific set of criteria for determining whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities with mental retardation or mental illness may be admitted to a long-term care facility.

(6) "*Persons with disabilities or persons who are elderly*" means, for purposes of establishing home and community-based services, those categories of persons who are elderly and disabled as defined in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n."

Section 3. Section 53-6-402, MCA, is amended to read:

"53-6-402. Community-based Medicaid-funded home and community-based services — waivers — funding limitations — populations — services — providers — long-term care facilities preadmission screening — powers and duties of department — rulemaking authority. (1) The department may operate, for persons eligible for medicaid, a program of obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as may be amended funded with medicaid money for categories of persons with disabilities or persons who are elderly.

(2) *The department may, subject to the terms and conditions of a federal waiver of law, administer programs of home and community-based services to serve persons with disabilities or persons who are elderly who meet the level of care requirements for one of the categories of long-term care services that may be funded with medicaid money. Persons with disabilities include persons with physical disabilities, chronic mental illness, developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations by the U.S. department of health and human services. Programs may serve combinations of populations and subsets of populations that are appropriate subjects for a particular program of services.*

(3) *The provision of services to a specific population through a home and community-based services program must be less costly in total medicaid funding than serving that population through the categories of long-term care facility services that the specific population would be eligible to receive otherwise.*

(4) *The department may initiate and operate a home and community-based services program to more efficiently apply available state general fund money, other available state and local public and private money, and federal money to the development and maintenance of medicaid-funded programs of health care and related services and to structure those programs for more efficient and effective delivery to specific populations.*

(5) *The department, in establishing programs of home and community-based services, shall administer the expenditures for each program within the available state spending authority that may be applied to that program. In establishing covered services for a home and community-based services program, the department shall establish those services in a manner to ensure that the resulting expenditures remain within the available funding for that program. To the extent permitted under federal law, the department may adopt financial participation requirements for enrollees in a home and community-based services program to foster appropriate utilization of services among enrollees and to maintain fiscal accountability of the program. The department may adopt financial participation requirements that may include but are not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may vary among the various home and community-based services programs. The department, as necessary, may further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through a home and community-based services program when the department determines that expenditures for a program are reasonably expected to exceed the available spending authority.*

(6) *The department may consider the following populations or subsets of populations for home and community-based services programs:*

(a) *persons with developmental disabilities who need, on an ongoing or frequent basis, habilitative and other specialized and supportive developmental disabilities services to meet their needs of daily living and to maintain the persons in community-integrated residential and day or work situations;*

(b) *persons with developmental disabilities who are 18 years of age and older and who are in need of habilitative and other specialized and supportive developmental disabilities services necessary to maintain the persons in personal residential situations and in integrated work opportunities;*

(c) persons 18 years of age and older with developmental disabilities and chronic mental illness who are in need of mental health services in addition to habilitative and other developmental disabilities services necessary to meet their needs of daily living, to treat the their mental illness, and to maintain the persons in community-integrated residential and day or work situations;

(d) children under 21 years of age who are seriously emotionally disturbed and in need of mental health and other specialized and supportive services to treat their mental illness and to maintain the children with their families or in other community-integrated residential situations;

(e) persons 18 years of age and older with brain injuries who are in need, on an ongoing or frequent basis, of habilitative and other specialized and supportive services to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or frequent basis, of specialized health services and personal assistance and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(g) persons with human immunodeficiency virus (HIV) infection who are in need of specialized health services and intensive pharmaceutical therapeutic regimens for abatement and control of the HIV infection and related symptoms in order to maintain the persons in personal residential situations;

(h) persons with chronic mental illness who suffer from serious chemical dependency and who are in need of intensive mental health and chemical dependency services to maintain the persons in personal or other community-integrated residential situations;

(i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health services, personal assistance, and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations; or

(j) persons 18 years of age and older with chronic mental illness who are in need, on an ongoing or frequent basis, of specialized health services and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations.

(7) For each authorized program of home and community-based services, the department shall set limits on overall expenditures and enrollment and limit expenditures as necessary to conform with the requirements of section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and the conditions placed upon approval of a program authorized through a waiver of federal law by the U.S. department of health and human services.

(8) A home and community-based services program may include any of the following categories of services as determined by the department to be appropriate for the population or populations to be served and as approved by the U.S. department of health and human services:

- (a) case management services;
- (b) homemaker services;
- (c) home health aide services;
- (d) personal care services;

(e) *adult day health services;*

(f) *habilitation services;*

(g) *respite care services; and*

(h) *other cost-effective services appropriate for maintaining the health and well-being of persons and to avoid institutionalization of persons.*

(9) *Subject to the approval of the U.S. department of health and human services, the department may establish appropriate programs of home and community-based services under this section in conjunction with programs that have limited pools of providers or with managed care arrangements, as implemented through 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.*

~~(2)(10)~~ (a) *The department may conduct long-term care preadmission screenings and resident reviews in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.*

(b) *Long-term care preadmission screenings and resident reviews are required for all ~~medicaid-eligible~~ persons entering seeking admission to a long-term care facilities and community-based services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are authorized under medicaid. Preadmission screenings and resident review of persons not applying for medical assistance under this part must be on a voluntary basis, except as required under the Social Security Act facility.*

(c) *A person determined through a long-term care preadmission screening to have mental retardation or a mental illness may not reside in a long-term care facility unless the person meets the long-term care level-of-care determination applicable to the type of facility and is determined to have a primary need for the care provided through the facility.*

(d) *The long-term care preadmission screenings must include a determination of whether the person needs specialized mental retardation or mental health treatment while residing in the facility.*

~~(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1).~~

~~(4)(11)~~ *The department may adopt rules necessary to implement a program of community-based medicaid services and to establish a system of the long-term care preadmission screenings and resident reviews as part of that program screening process as required by section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings.*

(12) *The department shall adopt rules necessary for the implementation of each program of home and community-based services. The rules may include but are not limited to the following:*

(a) *the populations or subsets of populations, as provided in subsection (6), to be served in each program;*

(b) *limits on enrollment;*

- (c) *limits on per capita expenditures;*
- (d) *requirements and limitations for service costs and expenditures;*
- (e) *eligibility categories criteria, requirements, and related measures;*
- (f) *designation and description of the types and features of the particular services provided for under subsection (8);*
- (g) *provider requirements and reimbursement;*
- (h) *financial participation requirements for enrollees as provided in subsection (5);*
- (i) *utilization measures;*
- (j) *measures to ensure the appropriateness and quality of services to be delivered; and*
- (k) *other appropriate provisions necessary to the administration of the program and the delivery of services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S. department of health and human services.”*

Section 4. Directions to code commissioner. Wherever a reference to “community-based medicaid services” appears in legislation enacted by the 2005 legislature, the code commissioner is directed to change it to an appropriate reference to “home and community-based services”.

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2005

CHAPTER NO. 354

[SB 140]

AN ACT ESTABLISHING AN INTRASTATE MUTUAL AID SYSTEM TO AID IN REQUESTING ASSISTANCE FOR AND RESPONDING TO LOCAL EMERGENCIES AND DISASTERS; ALLOWING A POLITICAL SUBDIVISION OF THE STATE TO WITHDRAW FROM PARTICIPATION IN THE INTRASTATE MUTUAL AID SYSTEM; CREATING THE MONTANA INTRASTATE MUTUAL AID COMMITTEE AND DESCRIBING ITS MEMBERSHIP, DUTIES, AND AUTHORITY; ALLOWING FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA TO PARTICIPATE IN THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR ADMINISTRATION OF THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR GOVERNMENTAL IMMUNITY FROM LIABILITY UNDER CERTAIN CONDITIONS; AMENDING SECTION 10-3-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

WHEREAS, a system for statewide mutual aid among the state’s political subdivisions and Indian tribes does not exist; and

WHEREAS, emergencies and disasters transcend political jurisdictional boundaries; and

WHEREAS, the timely commitment of available resources to emergencies and disasters can save lives and protect property; and

WHEREAS, intergovernmental coordination and cooperation are essential for the protection of lives and property during emergencies and disasters; and

WHEREAS, intergovernmental preparation for potential emergencies and disasters is critical to effectively and efficiently respond to actual emergencies and disasters.

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

Section 1. Short title. [Sections 1 through 12] may be cited as the “Statewide Mutual Aid System Act”.

Section 2. Policy — purpose. (1) It is the policy of the state that:

(a) available resources should be made available whenever possible and practical to minimize the negative impacts of disasters and emergencies, regardless of the political jurisdiction in this state within which the disaster or emergency occurs and regardless of the political jurisdictions from which a request for assistance arises or from which or to which the resources are made available;

(b) agreements, either formal or informal, written or oral, between or among political subdivisions of this state, that exist or are entered into for the purpose of providing mutual aid in the event of a disaster or emergency should remain options for political subdivisions and should not be infringed upon or in any way affected by the provisions of [sections 1 through 12]; and

(c) in particular, the provisions of [sections 1 through 12] do not affect any mutual aid agreement, either formal or informal, written or oral, that is made or that may be made pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703 or a request for assistance or aid or assistance or aid provided or received pursuant to Title 7, chapter 33, 10-3-209, or 10-3-703.

(2) It is the purpose of [sections 1 through 12] to:

(a) establish an effective and efficient mutual aid system in which a political jurisdiction can choose to participate that can operate separate from yet integrated with other freestanding mutual aid systems or agreements;

(b) provide to political jurisdictions in the state another option for establishing mutual aid agreements and for requesting, providing, and receiving mutual aid; and

(c) allow political jurisdictions maximum flexibility to protect life and property through mutual aid agreements.

Section 3. Statewide mutual aid system — definitions. As used in [sections 1 through 12], the following definitions apply:

(1) “Committee” means the Montana intrastate mutual aid committee created in [section 4].

(2) “Disaster” has the meaning provided in 10-3-103.

(3) “Emergency” has the meaning provided in 10-3-103.

(4) “Member jurisdiction” means a political subdivision or a federally recognized Indian tribe that participates in the system.

(5) "System" means the Montana intrastate mutual aid system provided for in [section 6].

Section 4. Montana intrastate mutual aid committee — members — officers — meetings — compensation. (1) There is a Montana intrastate mutual aid committee.

(2) All members of the committee must be appointed by and serve at the pleasure of the state emergency response commission established in 10-3-1204.

(3) The committee shall elect from among its members a presiding officer, a vice presiding officer, and any other officers considered necessary or advisable by the committee.

(4) The committee shall meet at least annually and may meet at the call of the presiding officer or as otherwise considered necessary or advisable by two-thirds of the members.

(5) Members of the committee are not entitled to compensation or to reimbursement for expenses incurred for serving on or participating in the activities of the committee. This subsection does not preclude a member jurisdiction from compensating or reimbursing the expenses of a committee member.

Section 5. Montana intrastate mutual aid committee — duties. The committee shall:

(1) review the progress and status of intrastate mutual aid;

(2) assist in developing methods to track and evaluate activation of the system;

(3) examine issues facing member jurisdictions in the implementation of intrastate mutual aid;

(4) develop, adopt, and disseminate comprehensive guidelines and procedures that address the following:

(a) projected or anticipated costs of establishing and maintaining the system;

(b) checklists for requesting and providing intrastate mutual aid assistance;

(c) recordkeeping for all member jurisdictions; and

(d) procedures for reimbursing the actual and legitimate expenses of a member jurisdiction that responds to a request for aid or assistance through the system; and

(5) adopt any other guidelines or procedures considered necessary by the committee to implement an effective and efficient system.

Section 6. Intrastate mutual aid system — initial participation — withdrawing. (1) There is a Montana intrastate mutual aid system. The system is composed of and may be described as:

(a) the member jurisdictions and any action taken by a member jurisdiction pursuant to [sections 1 through 12];

(b) the committee and any action taken by the committee pursuant to [sections 1 through 12];

(c) the guidelines and procedures described in [section 5(4)];

(d) any action taken with respect to requesting assistance for an emergency or disaster under [sections 1 through 12]; and

(e) any action taken with respect to responding to a request for assistance for an emergency or disaster under [sections 1 through 12].

(2) Except as provided in subsection (4), every political subdivision of the state is part of the system.

(3) A federally recognized Indian tribe that is located within the boundaries of the state may be a member jurisdiction upon:

(a) adoption by the tribal government of a resolution declaring the tribe's desire to be a member jurisdiction; and

(b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(4) A member jurisdiction may elect not to participate or to withdraw from the system upon:

(a) adopting a resolution or ordinance declaring that the member jurisdiction elects not to participate in the system; and

(b) receipt by the division, as defined in 10-3-103, of a copy of the resolution.

(5) This section does not preclude a member jurisdiction from entering into any other agreement with another political subdivision and does not affect any other agreement to which a political subdivision is a party or may become a party.

Section 7. Intrastate mutual aid system — request for assistance. (1)

A member jurisdiction may request assistance from another member jurisdiction:

(a) to prevent, mitigate, respond to, or recover from an emergency or disaster; or

(b) in concert with drills or exercises between member jurisdictions.

(2) A request for assistance must be made by or through the presiding officer of the governing body of the member jurisdiction or the chief executive officer or the chief executive officer's designee of a member jurisdiction. A request may be verbal or in writing and is not required to go directly to the division, as defined in 10-3-103. If a request is verbal, the request must be confirmed in writing within 30 days of the date on which the request was made.

Section 8. Intrastate mutual aid system — limitation on assistance — command and control. A member jurisdiction's obligation to provide assistance to prevent, respond to, or recover from an emergency or disaster or in drills or exercises is subject to the following conditions:

(1) A member jurisdiction that responds to a request for assistance from a requesting member jurisdiction may withhold resources to the extent necessary to provide reasonable protection and services for the responding jurisdiction.

(2) The personnel of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction for purposes that include medical protocols, standard operating procedures, and other protocols; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

(3) The assets and equipment of a responding member jurisdiction are under:

(a) the command control of the responding jurisdiction; and

(b) the operational control of the appropriate officials of the member jurisdiction receiving the assistance.

Section 9. Intrastate mutual aid system — portability of bona fides.

If a person or entity holds a license, certificate, permit, or similar documentation that evidences the person's or entity's qualifications in a professional, mechanical, or other skill and the assistance of the person or entity is requested by a member jurisdiction, the person or entity is:

(1) considered to be licensed, certified, permitted, or otherwise documented in the member jurisdiction that requests assistance for the duration of the emergency or disaster or of the drills or exercises; and

(2) subject to any legal limitations or conditions prescribed by the governing body or chief executive of the member jurisdiction that receives the assistance.

Section 10. Intrastate mutual aid system — reimbursement — dispute resolution. (1) A requesting member jurisdiction shall reimburse each member jurisdiction that responds to a request for aid or assistance and renders aid under the system unless the member jurisdiction rendering aid donates all or a portion of the cost of the assistance to the requesting member jurisdiction.

(2) A request for reimbursement must be in accordance with procedures developed by the committee.

(3) If a dispute regarding reimbursement arises between a party that requested assistance under the system and a party that provided assistance under the system, the involved parties shall make every effort to resolve the dispute within 30 days of written notice of the dispute given by the party asserting noncompliance to the other party.

(4) (a) If the dispute is not resolved within 90 days from the date of the notice, either party may request that the dispute be resolved through arbitration.

(b) All arbitration occurring under this section must be conducted pursuant to the commercial arbitration rules and mediation procedures of the American arbitration association as the rules and procedures exist on the date of notification described in subsection (3).

Section 11. Intrastate mutual aid system — workers' compensation coverage. (1) If a person is an employee of a member jurisdiction that responds to a request for assistance from a member jurisdiction and the person sustains injury in the course of providing the requested assistance, the person is entitled to all applicable benefits, including workers' compensation benefits, normally available to the person as an employee of the member jurisdiction that employs the person.

(2) If the person's injury results in the person's death, the person's estate must receive any additional state and federal benefits that may be available for death in the line of duty.

Section 12. Liability — immunity. (1) All activities performed pursuant to a request for assistance as provided for in [sections 1 through 12] are considered to be governmental functions.

(2) Except as provided in [section 11], a person responding to a request for assistance who is under the operational control of the requesting member jurisdiction, as provided for in [section 8], is considered for the purposes of liability to be an employee of the requesting member jurisdiction.

(3) Except in the case of willful misconduct, gross negligence, or bad faith, the member jurisdiction or an employee of the member jurisdiction is immune from liability for the death of or injury to any person or for damage to property if the member jurisdiction or the employee of the member jurisdiction is complying with or attempting to comply with the system.

Section 13. Section 10-3-1204, MCA, is amended to read:

“10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 27 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in [section 4].

~~(14)~~(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Section 14. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 12].

Section 15. Two-thirds vote required — contingent voidness. Because [section 12(3)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then [section 12(3)] is void.

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 band of Chippewa.

Section 17. 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 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 on passage and approval.

Section 20. Applicability. (1) [This act], except [sections 7 through 12], applies on [the effective date of this act].

(2) [Sections 7 through 12] apply October 1, 2005.

Section 21. Transition. Because [section 4], creating the Montana intrastate mutual aid committee, is effective and applicable on passage and approval, the state emergency response commission established in 10-3-1204 will not have had the opportunity to appoint the members of the committee. Therefore, the state emergency response commission shall appoint the members of the Montana intrastate mutual aid committee before August 1, 2005.

Approved April 21, 2005

CHAPTER NO. 355

[SB 143]

AN ACT PROVIDING FOR CONTINGENT TRANSFERS AND AN APPROPRIATION FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-704 AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 75-10-704, MCA, is amended to read:

“75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for

indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.

(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9)."

Section 2. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, *except as provided in subsection (9)*, must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, ~~except as provided in subsection (10)~~, to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

- (a) all penalties assessed pursuant to 75-10-750(12);
- (b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;
- (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;
- (d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;
- (e) unencumbered funds remaining in the abandoned mines state special revenue account;
- (f) interest income on the account;
- (g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection ~~(8)~~ (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

~~(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.~~

~~(8)~~(7) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

~~(9)~~(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

~~(10)(9)~~ For the biennium beginning July 1, ~~2003~~ 2005, and subject to the provisions of ~~section 4, Chapter 199, Laws of 2003~~ [section 3], the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.”

Section 3. Contingent transfer of orphan share funds — appropriation. (1) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the environmental quality protection fund established in 75-10-704 an amount not to exceed \$600,000 during the biennium beginning July 1, 2005, if the expenditures from the environmental quality fund exceed revenue available to the fund. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the environmental quality protection fund in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(2) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the hazardous waste/CERCLA special revenue account established in 75-10-621 an amount not to exceed \$600,000 during the biennium beginning July 1, 2005, if the expenditures from the hazardous waste/CERCLA account exceed revenue available to the account. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the hazardous waste/CERCLA account in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(3) The total of the amounts transferred and appropriated pursuant to subsections (1) and (2) may not exceed \$600,000.

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 356

[SB 145]

AN ACT REVISING LAWS RELATED TO THE REGULATION OF PETROLEUM TANKS; REVISING THE MEMBERSHIP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING REIMBURSEMENT ELIGIBILITY CRITERIA AND PROCEDURES; REQUIRING THE BOARD TO ANALYZE AND REPORT ON THE VIABILITY OF THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 2-15-2108, 75-11-308, 75-11-309, 75-11-312, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-2108, MCA, is amended to read:

“2-15-2108. Petroleum tank release compensation board. (1) There is a petroleum tank release compensation board.

(2) The board consists of ~~seven~~ seven members appointed by the governor as follows:

(a) a representative of the financial or banking industry with experience in small business or property loans;

~~(b) an attorney licensed to practice law in Montana with experience in environmental law;~~

~~(c)~~(b) a representative of the petroleum services industry or a representative of the petroleum release remediation consultant industry;

~~(d)~~(c) a representative of independent petroleum marketers and chain retailers;

~~(e)~~(d) ~~a representative~~ a representative of the general public;

~~(f)~~(e) a representative of service station dealers; ~~and~~

~~(g)~~(f) a representative of the insurance industry; *and*

(g) *a person with a background in environmental regulation.*

(3) The board shall elect a presiding officer.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503.”

Section 2. Section 75-11-308, MCA, is amended to read:

“75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989; ~~and~~

(b) the release occurred from:

(i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the time that the release was discovered;

(ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from a petroleum storage tank at the time that the release was discovered; or

(iii) an underground storage tank, as defined in 75-11-503, that the ~~property owner had no previous knowledge of if the tank was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release at the time that the release was discovered~~ board determines was unknown to both the property owner and the department prior to its discovery if the owner applies to the department for a closure permit in accordance with 75-11-212 within 30 days of the date upon which the owner first had knowledge of the tank and closes the tank in accordance with the requirements of the permit before the permit expires; and

~~(b)~~(c) the release was an accidental release;

~~(c) following the discovery of the release, the underground storage tank from which the release occurred was removed or had a valid permit pursuant to 75-11-509 and the petroleum storage tank remained in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases; and~~

~~(d) the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective~~

~~action plan approved by the department, from the time of discovery until the release is resolved.~~

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

- (a) a tank located at a refinery or a terminal of a refiner;
- (b) a tank located at an oil and gas production facility;
- (c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations;
- (d) a tank belonging to the federal government;
- (e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or
- (f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

~~(3) When, subsequent to the discovery of a release, an owner or operator fails to remain in compliance as required by subsection (1)(e) or fails to conduct corrective action as required by subsection (1)(d) and is issued a violation letter by the department, all reimbursement of claims submitted after the date of the violation letter must be suspended. Upon a determination by the department that all violations identified in the violation letter have been corrected, all suspended and future claims may be reimbursed according to criteria established by the board. In determining the amount of reimbursement, if any, the board may consider the effect and duration of the noncompliance."~~

Section 3. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs. (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.*

~~(b)(c)~~ (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.

~~(c)(d)~~ (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)(e)~~ (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.

~~(1)(e)~~ 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.

~~(1)(f)~~ The owner or operator shall implement the *corrective action plan or plans* approved ~~plan~~ *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.

~~(1)(g)~~ (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.

~~(1)(g)~~ (h) 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.

~~(1)(h)~~ (i) In addition to the documentation in subsections ~~(1)(f)~~ (1)(g) and ~~(1)(g)~~ (1)(h), when the release is claimed to have originated from a 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;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(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.

~~(2)~~(3) The board shall review each claim received under subsections ~~(1)(f)~~ (1)(g) and ~~(1)(g)~~ (1)(h), 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.*

~~(3)~~(4) If an owner or operator disagrees with a board determination under subsection ~~(2)~~ (3), the owner or operator may submit a written request for a hearing before the board. 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.

~~(4)~~(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.

~~(5)~~(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 ~~(5)(b)~~ (6)(b) does not affect the order in which money in the fund is obligated under subsection ~~(4)~~ (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 4. Section 75-11-312, MCA, is amended to read:

“75-11-312. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being ~~utilized~~ *used* in the most efficient manner, the board may implement a program of third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim for review by a qualified third party of the board’s choosing.

(2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the board may remand the plan to the department for further review.

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309~~(2)(a)(3)(a)~~, the board may deny the costs, subject to 75-11-309~~(3)(4)~~.”

Section 5. Section 75-11-318, MCA, is amended to read:

“75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators. The board may hire its own staff to assist in the implementation of this part.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309~~(2)(3)~~, shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board shall use the fund to pay for:

(a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department budget for legislative approval. Department administrative expenses on behalf of the board may include:

(i) the review or preparation of corrective action plans;

(ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part; and

(iii) the actual and necessary administrative support provided to the board.

(b) department of transportation staff expenses used for the collection of the petroleum storage tank cleanup fee;

(c) third-party review of corrective action plans or claims pursuant to 75-11-312;

(d) board staff expenses; and

(e) expenses of implementing the board’s duties as provided in this part.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;

(e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department; and

(f) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225.

(7) *The board shall conduct an analysis of the short-term and long-term viability of the fund and report its findings to the director of the department and the legislative auditor by July 1 prior to each regular legislative session. This analysis must include but is not limited to:*

(a) trends in fund revenue and expenditure activity;

(b) exposure to long-term liabilities;

(c) impacts of changes in state and federal regulations relating to underground and aboveground storage tanks;

(d) availability of petroleum storage tank liability insurance in the private sector and trends in provisions of the insurance; and

(e) the continuing need for collection of all or part of the petroleum tank release cleanup fee.”

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 357

[SB 160]

AN ACT ELIMINATING THE STATUTORY AUTHORITY OF THE LEGISLATURE TO ASSIGN HOLDOVER SENATORS TO DISTRICTS FOR THE REMAINDER OF THOSE SENATORS' TERMS IN IMPLEMENTING A REDISTRICTING PLAN; AND REPEALING SECTION 5-1-116, MCA.

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

Section 1. Repealer. Section 5-1-116, MCA, is repealed.

Approved April 21, 2005

CHAPTER NO. 358

[SB 174]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO PROVIDE AN EXAMINER TO ADMINISTER MOTOR VEHICLE DRIVER'S LICENSE

EXAMINATIONS THAT ARE PREVIOUSLY SCHEDULED; AND
AMENDING SECTION 61-5-101, MCA.

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

Section 1. Section 61-5-101, MCA, is amended to read:

“61-5-101. Driver licensing responsibilities of department. (1) The department shall maintain a permanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing driver’s license services as required by this part.

(2) The department shall provide an examiner to administer a commercial driver’s license *or motor vehicle driver’s license* examination in any county of the state if the examination is previously scheduled through the department.”

Approved April 21, 2005

CHAPTER NO. 359

[SB 182]

AN ACT PROVIDING THAT AN ABSENTEE BALLOT CAST AND
RETURNED BY AN ELECTOR WHO DIES BEFORE ELECTION DAY MUST
BE COUNTED; AND AMENDING SECTIONS 13-13-204 AND 13-13-243,
MCA.

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

Section 1. 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 — effect of absentee elector’s death. (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may vote in person in any manner at the elector’s polling place.

(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.

(3) 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 ~~does not count~~ *must be counted.*”

Section 2. Section 13-13-243, MCA, is amended to read:

“13-13-243. Rejected absentee ballots. (1) The rejected ballots, the applications, and all envelopes ~~shall~~ *must* be enclosed in an envelope and sealed, and the judges shall write on the envelope “rejected ballot(s) of absentee elector” (writing in the elector’s name).

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be marked “voted in person” and initialed by a majority of the election judges.

~~(2) The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.~~

~~(4)~~(3) All rejected ballots shall *must* be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order."

Approved April 21, 2005

CHAPTER NO. 360

[SB 207]

AN ACT REQUIRING AS A CONDITION OF SENTENCE THAT SEXUAL OFFENDERS DESIGNATED AS LEVEL 3 OFFENDERS PARTICIPATE IN A PROGRAM FOR CONTINUOUS, SATELLITE-BASED MONITORING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO ESTABLISH A PROGRAM FOR THE CONTINUOUS SATELLITE-BASED MONITORING OF LEVEL 3 SEXUAL OFFENDERS; REQUIRING PROGRESS REPORTS; AMENDING SECTION 46-23-1031, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the United States Department of Justice has published confirmed statistics that over 60% of serious and violent offenders in state prisons have a history of prior convictions and that the number of prisoners convicted for violent sexual assault has increased by an annual rate of 15% each year since 1980; and

WHEREAS, criminals who commit sexual and violent crimes have shown unusually high recidivism rates, thereby posing an unacceptable level of risk to the community; and

WHEREAS, intensive supervision of sexual or violent offenders is a crucial element to both the rehabilitation of the released convicts and the safety of the surrounding community; and

WHEREAS, mature technological solutions now exist to provide improved supervision and behavioral control of sexual or violent offenders following their release; and

WHEREAS, these solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly updated geographical location of supervised sexual or violent offenders following their release with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations; and

WHEREAS, continuous 24-hour-a-day, 7-day-a-week electronic monitoring of those convicted of sexual offenses is a valuable and reasonable requirement for those convicts who are placed on probation, who failed to register as sexual or violent offenders as required by law, or who have been released from incarceration while they remain under the active supervision of the state.

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

Section 1. Sexual offenders — electronic monitoring as additional condition of sentence. Upon sentencing a person for conviction of a sexual offense under Title 45, chapter 5, part 5, who is designated as a level 3 offender under 46-23-509, the sentencing judge shall, as a condition of probation, parole, conditional release, or deferment or suspension of sentence, require the offender to participate in the program for the continuous satellite-based monitoring of sexual offenders established under [section 2].

Section 2. Sexual offenders — electronic monitoring program — contract — rules. (1) The department shall establish a program for the continuous, satellite-based monitoring of sexual offenders designated as level 3 offenders under 46-23-509. The program may include:

(a) time-correlated and continuous tracking of the geographic location of a monitored person using a global positioning system based on satellite and other location-tracking technology;

(b) reporting of a monitored person's violation of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once-a-day, passive reporting to near-real-time, active reporting.

(c) an automated system that allows local and state law enforcement officials to compare the geographic positions of a monitored person with reported criminal incidents to determine whether the monitored person was at or near the scene of a reported criminal incident and to include or exclude a monitored person from the investigation of a criminal incident.

(2) The department shall adopt rules for the establishment and operation of the program required under subsection (1), including rules establishing supervisory fees. The department may consult with state and local law enforcement officials in developing the rules.

(3) The department shall contract with a single vendor for the procurement of the equipment and services needed to monitor persons under the program and correlate the movements of monitored persons to reported criminal incidents. The contract may provide for equipment and services necessary to implement or facilitate any of the provisions of this section and for the collection and disposition of the fees provided for in 46-23-1031 and may allow for the reasonable cost of collection of the proceeds.

Section 3. Section 46-23-1031, MCA, is amended to read:

“46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection ~~(1)(b)~~ (1)(c), a probationer, parolee, or person committed to the department who is supervised by the department:

(i) under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision; or

(ii) under continuous satellite-based monitoring shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision a supervisory fee of no more than \$4,000 a year as established by rules adopted by the department under [section 2].

(b) A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

~~(b)(c)~~ The court, department, or board may reduce or waive a fee required by subsection (1)(a) or (1)(b) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

~~(b) Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district~~ District court clerks shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator.”

Section 4. Interim report to legislature. During fiscal years 2006 and 2007, the department of corrections shall make regular progress reports to the law and justice interim committee regarding the establishment, operation, and administration of the program for the continuous satellite-based monitoring of sexual offenders.

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 2].

Section 6. Coordination instruction. If House Bill No. 288 is passed and approved and if it amends 46-23-1031, then [section 3 of this act], amending 46-23-1031, is void and 46-23-1031 must be amended as follows:

“46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection ~~(1)(b)~~ (1)(c), a probationer, parolee, or person committed to the department who is supervised by the department:

(i) under intensive supervision or conditional release shall pay to the ~~clerk of the district court that has jurisdiction over the person during the person's supervision~~ department a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision; or

(ii) under continuous satellite-based monitoring shall pay to the department a supervisory fee of no more than \$4,000 a year as established by rules adopted by the department under [section 2].

(b) A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

~~(b)(c)~~ The court, department, or board may reduce or waive a fee required by subsection (1)(a) or (1)(b) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

~~(b) Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district court clerks~~ *The department* shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) ~~as specified by the supreme court administrator.~~

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective July 1, 2005.

Approved April 21, 2005

CHAPTER NO. 361

[SB 208]

AN ACT INCREASING FROM \$25 TO \$50 THE CHARGE IMPOSED UPON CONVICTION OF A MISDEMEANOR OR FELONY UNDER TITLE 45, 61-8-401, OR 61-8-406 AND USED TO FUND CRIME VICTIM AND WITNESS ADVOCATE PROGRAMS; AND AMENDING SECTION 46-18-236, MCA.

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

Section 1. Section 46-18-236, MCA, is amended to read:

“46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$15 for each misdemeanor charge;
- (b) the greater of \$20 or 10% of the fine levied for each felony charge; and
- (c) an additional ~~\$25~~ \$50 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal

court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

Approved April 21, 2005

CHAPTER NO. 362

[SB 304]

AN ACT ESTABLISHING THE RAWHIDE STAMPEDE RUSTLERS AND RENDEZVOUS TRADE CORRIDOR ALONG STATE HIGHWAY 16 BETWEEN GLENDIVE AND THE PORT OF RAYMOND.

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

Section 1. Rawhide stampede rustlers and rendezvous trade corridor — planning. The commission shall designate a route, to be known as the rawhide stampede rustlers and rendezvous trade corridor, along the present route of state highway 16 from Glendive to the port of Raymond in order to

facilitate trade between Canada and Mexico, to encourage economic development, to enhance the safety of motorists along the route, as appropriate, and to support region connectivity. Planning for the state highway 16 improvements must be included, as appropriate, in any future fiscal plan developed by the department.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to the tribal government located on the Fort Peck reservation.

Section 3. Codification instruction. [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 21, 2005

CHAPTER NO. 363

[SB 311]

AN ACT REGULATING THE USE OF CREDIT INFORMATION IN PERSONAL INSURANCE; PROVIDING THE PURPOSE, SCOPE, AND DEFINITIONS FOR THE ACT; ESTABLISHING CRITERIA FOR THE USE OF CREDIT INFORMATION IN INSURANCE UNDERWRITING; LISTING CONDITIONS FOR UNDERWRITING OR RATING EXCEPTIONS; PROVIDING FOR DISPUTE RESOLUTION AND ERROR CORRECTION; PROVIDING FOR NOTICE TO CONSUMERS OF THE USE OF CREDIT INFORMATION AND ADVERSE ACTION BASED ON THE USE OF CREDIT INFORMATION; REQUIRING INSURERS TO FILE THEIR CREDIT SCORING MODELS WITH THE COMMISSIONER OF INSURANCE; PROVIDING FOR THE INDEMNIFICATION OF INSURANCE PRODUCERS USING SCORING INFORMATION; PROHIBITING CONSUMER REPORTING AGENCIES FROM PROVIDING OR SELLING CERTAIN DATA PERTAINING TO A CONSUMER'S CREDIT; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 11] may be cited as the "Montana Use of Credit Information in Personal Insurance Act".

Section 2. Purpose. The purpose of [sections 1 through 11] is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of credit information.

Section 3. Scope. [Sections 1 through 11] apply to personal insurance and not to commercial insurance. For purposes of [sections 1 through 11], "personal insurance" means private passenger automobile, home owners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile, and recreational vehicle policies. These policies must be individually underwritten for personal, family, or household use. Other types of insurance may not be included as personal insurance for the purpose of [sections 1 through 11].

Section 4. Definitions. For the purposes of [sections 1 through 11], the following definitions apply:

(1) "Adverse action" means, in regard to the terms of coverage or amount of coverage of any insurance, existing or applied for, in connection with the underwriting of personal insurance, any of the following:

- (a) denial, nonrenewal, or cancellation of coverage;
- (b) an increase in any charge for coverage;
- (c) failure to give an otherwise available credit-related discount; or
- (d) a reduction or any other adverse or unfavorable change in the terms of coverage or the amount of coverage.

(2) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(3) "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

(4) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or of an applicant for a personal insurance policy.

(5) "Consumer reporting agency" means any entity that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit related may not be considered credit information regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

Section 5. 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 re-rate 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 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; or

(h) use a credit 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 6. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of that determination from either the consumer reporting agency or the insured, the insurer shall reunderwrite and rerate the consumer within 30 days of receiving the notice. After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated

back to the shorter of either the last 12 months of coverage or the actual policy period.

Section 7. Initial notification. (1) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time that the insurance application is taken, that it may obtain credit information in connection with the application. The disclosure must be either written or provided to an applicant in the same medium as the application for insurance. The insurer does not have to provide the disclosure statement required under this section to any insured on a renewal policy if the consumer has previously been provided a disclosure statement.

(2) Use of the following disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

Section 8. Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer shall:

(1) provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

(2) provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notification must include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms, such as "poor credit history", "poor credit rating", or "poor insurance score", does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are considered to comply with this section.

Section 9. Filing. (1) Insurers that use insurance scores to underwrite and rate risks shall file their scoring models or other scoring processes with the commissioner. A third party may file scoring models on behalf of insurers.

(2) A filing relating to credit information is considered a trade secret under the laws of this state.

Section 10. Indemnification. An insurer shall indemnify, defend, and hold insurance producers harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurance producer that obtains or uses credit information or insurance scores for an insurer if the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. This section may not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

Section 11. Sale of policy term information by consumer reporting agency. (1) A consumer reporting agency may not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. This information includes but is not limited to the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's

insurance may expire and the terms and conditions of the consumer's insurance coverage.

(2) The restrictions provided in subsection (1) do not apply to data or lists that the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf the insurance producer acted, or the insurer's affiliates or holding companies.

(3) This section may not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Section 12. 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 ~~du~~ 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) 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 based solely on adverse information contained in a driving record that is 3 years old or older. However, an insurer may provide discounts to an insured based on favorable aspects of an insured's claims history that is 3 years old or older.

(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.

~~(11) (a) For the purposes of this subsection (11), "credit history" means that portion of a credit report or background report that addresses the applicant's or insured's debt payment history or lack of history but does not include public information including convictions, lawsuits, bankruptcies, or similar public information.~~

~~(b) An insurer writing automobile or homeowner insurance may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the scope or amount of coverage or benefits available to an individual based solely on the insurer's knowledge of the individual's credit history unless:~~

~~(i) the insurer possesses substantial documentation that credit history is significantly correlated with the types of risks insured or to be insured;~~

~~(ii) the insurer sends written communication to the individual disclosing that the insurance coverage was declined, not renewed, or limited in scope or amount of coverage or benefits because of credit information relating to the applicant or the insured; and~~

~~(iii) upon subsequent request of the individual, mailed within 10 days of receipt of the denial, nonrenewal, or limitation, the insurer provides the individual with a copy of the credit report at issue or the name and address of a third party from whom the individual may obtain a copy of the credit report, within 10 days of receipt of the request.~~

~~(c) The provisions of this subsection (11) are not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act applicable to lending institutions, credit bureaus, or other credit service organizations that maintain or distribute credit histories on insurance applicants or policyholders.”~~

Section 13. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [sections 1 through 11].

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. [This act] applies to personal insurance policies written to be effective or renewed on or after October 1, 2005.

Approved April 21, 2005

CHAPTER NO. 364

[SB 381]

AN ACT DEFINING “CHILD” OR “CHILDREN” FOR PURPOSES OF THE CRIMINAL LAWS; REVISING THE OFFENSE OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT THE LURING OF CHILDREN TO ENGAGE IN ANY SEXUAL CONDUCT AND NOT JUST FOR PURPOSES OF CHILD PORNOGRAPHY IS A CRIME; AND AMENDING SECTIONS 45-2-101 AND 45-5-625, MCA.

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

Section 1. Section 45-2-101, MCA, is amended to read:

“45-2-101. General definitions. Unless otherwise specified in the statute, all words ~~will~~ *must* be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) “Acts” has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) “Administrative proceeding” means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) “Another” means a person or persons other than the offender.

(4) (a) “Benefit” means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) “Bodily injury” means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "*Child*" or "*children*" means any individual or individuals under 18 years of age, unless a different age is specified.

(6)(7) "Cohabit" means to live together under the representation of being married.

(7)(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8)(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9)(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10)(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11)(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12)(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13)(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14)(15) "Conduct" means an act or series of acts and the accompanying mental state.

(15)(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16)(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(17)(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property,

whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

~~(18)~~(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

~~(19)~~(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

~~(20)~~(21) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

~~(21)~~(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

~~(22)~~(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

~~(23)~~(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

~~(24)~~(25) A "frisk" is a search by an external patting of a person's clothing.

~~(25)~~(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

~~(26)~~(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

~~(27)~~(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

~~(28)~~(29) "Human being" means a person who has been born and is alive.

~~(29)~~(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

~~(30)~~(31) "Inmate" means a person who is confined in a correctional institution.

~~(31)~~(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

~~(32)~~(33) An “involuntary act” means an act that is:

- (a) a reflex or convulsion;
- (b) a bodily movement during unconsciousness or sleep;
- (c) conduct during hypnosis or resulting from hypnotic suggestion; or
- (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

~~(33)~~(34) “Juror” means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term “juror” also includes a person who has been drawn or summoned to attend as a prospective juror.

~~(34)~~(35) “Knowingly”—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person’s own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person’s conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as “knowing” or “with knowledge”, have the same meaning.

~~(35)~~(36) “Medicaid” means the Montana medical assistance program provided for in Title 53, chapter 6.

~~(36)~~(37) “Medicaid agency” has the meaning in 53-6-155.

~~(37)~~(38) “Medicaid benefit” means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

~~(38)~~(39) (a) “Medicaid claim” means a communication, whether in oral, written, electronic, magnetic, or other form:

- (i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or
- (ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

~~(39)~~(40) “Mentally defective” means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person’s own conduct.

~~(40)~~(41) “Mentally incapacitated” means that a person is rendered temporarily incapable of appreciating or controlling the person’s own conduct as a result of the influence of an intoxicating substance.

~~(41)~~(42) “Misdemeanor” means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

~~(42)~~(43) “Negligently”—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation. “Gross deviation” means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as “negligent” and “with negligence”, have the same meaning.

~~(43)~~(44) “Nolo contendere” means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

~~(44)~~(45) “Obtain” means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

~~(45)~~(46) “Obtains or exerts control” includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(46)~~(47) “Occupied structure” means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

~~(47)~~(48) “Offender” means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

~~(48)~~(49) “Offense” means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

~~(49)~~(50) (a) “Official detention” means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

~~(50)~~(51) “Official proceeding” means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

~~(51)~~(52) “Other state” means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

~~(52)~~(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

~~(53)~~(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

~~(54)~~(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

~~(55)~~(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

~~(56)~~(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

~~(57)~~(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

~~(58)~~(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

~~(59)~~(60) "Premises" includes any type of structure or building and real property.

~~(60)~~(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;
- (g) electricity, gas, and water;
- (h) birds, animals, and fish that ordinarily are kept in a state of confinement;
- (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;
- (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and
- (k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer

programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

~~(61)~~(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

~~(62)~~(63) "Public place" means a place to which the public or a substantial group has access.

~~(63)~~(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. ~~The term does not include witnesses.~~ The term "public servant" includes one who has been elected or designated to become a public servant.

(b) *The term does not include witnesses.*

~~(64)~~(65) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

~~(65)~~(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

~~(66)~~(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

~~(67)~~(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection ~~(67)~~(a) (68)(a), any penetration, however slight, is sufficient.

~~(68)~~(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

~~(69)~~(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

~~(70)~~(71) "Statute" means an act of the legislature of this state.

~~(71)~~(72) "Stolen property" means property over which control has been obtained by theft.

~~(72)~~(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

~~(73)~~(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

~~(74)~~(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

~~(75)~~(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(76)~~(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might

reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,000 by the standards set forth in subsection ~~(76)(a)~~ (77)(a), its value is considered to be an amount less than \$1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(77)~~(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

~~(78)~~(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(79)~~(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, *by any means of communication, including electronic communication as defined in 45-8-213*, persuades, entices, counsels, or procures a child *under 16 years of age or a person the offender believes to be a child under 16 years of age* to engage in sexual conduct, actual or simulated, ~~for use as designated in subsection (1)(a), (1)(b), or (1)(d);~~

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which ~~children are~~ *a child is* engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which ~~children are~~ *a child is* engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which ~~children are~~ *a child is* engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections.”

Approved April 21, 2005

CHAPTER NO. 365

[SB 440]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE SPECIALTY HOSPITALS; PROVIDING A DEFINITION; PROVIDING REQUIREMENTS FOR LICENSURE; ENACTING A MORATORIUM ON LICENSURE OF SPECIALTY HOSPITALS UNTIL JUNE 1, 2007; AMENDING SECTION 50-5-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Section 50-5-101, MCA, is amended to read:

“50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation” means a designation of approval.

(2) “Accreditation association for ambulatory health care” means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) “Activities of daily living” means tasks usually performed in the course of a normal day in a resident’s life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) “Adult day-care center” means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) “Adult foster care home” means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

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

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in

that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

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

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services

include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. ~~Services~~ *Except as otherwise provided by law, services* provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; *and*

(ii) *specialty hospitals.*

(b) The term does not include critical access hospitals.

(29) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry—A" provides outpatient and inpatient care;

(b) an "infirmiry—B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

- (i) serves either adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services; and
- (iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or

both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) "*Specialty hospital*" means a specialty hospital as defined in [section 2].

(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and

approved by the governor and a statewide health coordinating council appointed by the director of the department.

(~~56~~)(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 2. Department to license specialty hospitals — standards — definition — moratorium. (1) The department shall license specialty hospitals using the requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) As used in this section, "specialty hospital" means a specialty hospital as defined in 42 U.S.C. 1395nn.

(3) Notwithstanding the requirements of subsection (1), the department may not license a specialty hospital until July 1, 2007.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 2].

Section 4. Contingent effective date. [This act] is effective upon certification by the director of public health and human services to the secretary of state that the moratorium on referrals by medical doctors to specialty hospitals provided for in section 507 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173 (42 U.S.C. 1395nn), has expired and not been continued. The director shall certify the date of the expiration as soon as the expiration is effective and shall send a copy of the certification to the code commissioner.

Section 5. Applicability. [This act] applies to specialty hospitals to be established after the moratorium on referrals to specialty hospitals referred to in [section 4] expires.

Section 6. Termination. [This act] terminates July 1, 2007.

Approved April 21, 2005

CHAPTER NO. 366

[SB 459]

AN ACT TRANSFERRING THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF TRANSPORTATION; ASSIGNING RESPONSIBILITY FOR THE ADOPTION OF MOTOR CARRIER SAFETY STANDARDS AND PRIMARY RESPONSIBILITY FOR MOTOR CARRIER INSPECTION TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THE MONTANA HIGHWAY PATROL TO COORDINATE WITH THE DEPARTMENT OF TRANSPORTATION FOR MOTOR CARRIER SAFETY AND ENFORCEMENT OF CERTAIN LAWS; AND AMENDING SECTIONS 15-70-233, 15-70-357, 19-8-101, 44-1-1005, 44-4-301, 44-4-302, 61-9-512, 61-10-141, 61-12-205, 61-12-206, 61-12-208, AND 76-13-601, MCA.

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

Section 1. Section 15-70-233, MCA, is amended to read:

“15-70-233. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) “conveyance” means a tank car, vehicle, or vessel that is used to transport fuel;

(b) “department” means the department of transportation; and

(c) “peace officer” means an employee of the department of transportation *designated or* appointed as a peace officer under *[section 8]* or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director’s designee before seizing fuel.

(4) Upon seizing the fuel *that* the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department’s determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70.”

Section 2. Section 15-70-357, MCA, is amended to read:

“15-70-357. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) “conveyance” means a tank car, vehicle, or vessel that is used to transport fuel;

(b) “department” means the department of transportation; and

(c) “peace officer” means an employee of the department of transportation *designated or* appointed as a peace officer under *[section 8]* or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director’s designee before seizing fuel.

(4) Upon seizing the fuel *that* the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

- (a) the original owner of the fuel;
- (b) the owner of the transportation company that conveyed the fuel; and
- (c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

- (a) provide the opportunity for a hearing;
- (b) if requested, conduct the hearing within 5 days after receiving the claim;
- (c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and
- (d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

- (i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or
- (ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

- (i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and
- (ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

- (a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or
- (b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

- (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or
- (b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 3. 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) "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, 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 *[section 8]* 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 4. Section 44-1-1005, MCA, is amended to read:

"44-1-1005. Motor carriers safety — enforcement — violations. (4) The department of justice shall adopt, by rule, standards for safety of operations of:

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

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

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

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

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

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

~~(2) Standards of safety adopted under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.~~

~~(3)(1) The highway patrol has the responsibility for enforcement of standards adopted pursuant to this section to enforce the provisions of Title 61, chapters 5, 8, and 9, as they apply to motor carriers and shall assist the department of transportation in the enforcement of safety standards adopted pursuant to [section 8]. Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to this section is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. This section does not prohibit the inspection of a motor vehicle, as provided for by this section, at a safe location on a public road.~~

~~(4) The department~~

~~(2) The highway patrol shall cooperate with the department of transportation to ensure minimum duplication and maximum coordination of enforcement effort of the provisions of Title 61 as they apply to motor carriers.~~

~~(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapters 5 and 9, and any standards adopted pursuant to this section. Each employee designated as a peace officer may:~~

~~(a) issue citations and make arrests;~~

~~(b) issue summonses;~~

~~(c) accept bail;~~

~~(d) serve warrants of arrest;~~

~~(e) make reasonable inspections of cargo carried by commercial motor vehicles;~~

~~(f) make reasonable safety inspections of commercial motor vehicles; and~~

~~(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of commercial motor vehicles.~~

~~(6) Violations of the standards adopted pursuant to this section are punishable as provided in 61-9-512, and the court, upon conviction or forfeiture of bail that is not vacated, shall forward a record of conviction or forfeiture to the department within 5 days in accordance with 61-11-101.~~

~~(7) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5."~~

Section 5. Section 44-4-301, MCA, is amended to read:

“44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board may:

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, juvenile detention center administrators, juvenile detention or juvenile corrections officers, public safety communications officers, probation and parole officers, corrections officers, and ~~commercial vehicle inspectors~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*; and

(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, juvenile detention center administrators, juvenile detention or juvenile corrections officers, public safety communications officers, probation and parole officers, corrections officers, and ~~commercial vehicle inspectors~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*.

(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of ~~motor carrier services division officers~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*, and establish minimum standards for law enforcement, detention officer, and juvenile detention or juvenile corrections officer training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

(6) The board shall establish minimum standards for training corrections officers and ~~commercial vehicle inspectors~~ *employees of the department of transportation designated or appointed as peace officers under [section 8] or 61-12-201*.

(7) It is the duty of the appointing authority to cause each probation and parole officer, corrections officer, juvenile detention or juvenile corrections officer, and ~~commercial vehicle inspector appointed under its authority~~ *employee of the department of transportation designated or appointed as a peace officer under [section 8] or 61-12-201* whose term of employment commenced after September 30, 1999, to attend and successfully complete within 1 year of employment, an appropriate basic course certified by the board. The appointing authority may terminate a probation and parole officer's, corrections officer's, or juvenile detention or juvenile corrections officer's, ~~or commercial vehicle inspector's~~ employment or the employment of an employee of the department of

transportation designated or appointed as a peace officer under [section 8] or 61-12-201 for failure to:

- (a) meet the minimum standards established by the board; or
- (b) satisfactorily complete the appropriate basic course.”

Section 6. Section 44-4-302, MCA, is amended to read:

“44-4-302. Definitions. As used in this part, the following definitions apply:

~~(1)~~ “Commercial vehicle inspector” means a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to ~~44-1-1005.~~

~~(2)~~(1) “Corrections officer” means a person who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a prison or juvenile correctional facility.

~~(3)~~(2) “Detention center” means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

~~(4)~~(3) “Detention center administrator” means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

~~(5)~~(4) “Detention officer” means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

~~(6)~~(5) “Juvenile detention center” means a detention facility as defined in 41-5-103.

~~(7)~~(6) “Juvenile detention or juvenile corrections officer” means a person who has full-time or part-time authority and responsibility for maintaining custody of juveniles under the jurisdiction of the youth court or the department of corrections and who performs tasks related to the operation of a juvenile detention center or a juvenile correctional facility.

~~(8)~~(7) “Public safety communications officer” means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

~~(9)~~(8) “Temporary detention center” means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time that a person is held in temporary detention may not exceed 96 hours.”

Section 7. Section 61-9-512, MCA, is amended to read:

“61-9-512. Violation of rules — penalty. (1) Any violation of any rules adopted by the department is a misdemeanor.

(2) A person convicted of a violation of any standard adopted pursuant to ~~44-1-1005 [section 8]~~ shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) The penalties provided in subsection (2) apply to any motor carrier that is a corporation subject to the standards adopted pursuant to ~~44-1-1005~~ [section 8]. The penalties may be imposed against:

- (a) a director or officer of the corporation;
- (b) any receiver, trustee, lessee, agent, or person acting for or employed by the corporation; or
- (c) any broker of property or officer, agent, or employee ~~thereof~~ *of the broker.*"

Section 8. Department of transportation to adopt motor carrier safety standards — enforcement of safety standards — department to designate peace officers — violation of standards — duty to obtain bills of lading for agricultural seeds — authority to inspect diesel-powered vehicles. (1) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5.

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

- (a) any for-hire motor carrier or any private motor carrier;
- (b) any motor vehicle or vehicle combination used in interstate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more;
- (c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;
- (d) any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and that is not used to transport passengers for compensation;
- (e) any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or
- (f) any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.

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

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

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

- (a) issue citations and make arrests in connection with violations of safety standards adopted under this section;

- (b) issue summons;
 - (c) accept bail;
 - (d) serve warrants for arrest;
 - (e) make reasonable inspections of cargo carried by commercial motor vehicles;
 - (f) enforce the provisions of Title 49 of the United States Code and regulations that have been adopted under Title 49 and make reasonable safety inspections of commercial motor vehicles used by motor carriers; and
 - (g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.
- (6) In addition to other enforcement duties assigned under 61-10-141 and this section, an employee of the department of transportation who is appointed as a peace officer pursuant to 61-12-201 or this section has:
- (a) the same authority to enforce provisions of the motor carriers law as that granted to the public service commission under 69-12-203;
 - (b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds, as defined in 80-5-120, that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date that the bill of lading was obtained; and
 - (c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.
- (7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction or forfeiture of bail that is not vacated, shall forward a record of conviction or forfeiture to the department within 5 days in accordance with 61-11-101.
- (8) The department of transportation shall report to the revenue and transportation interim committee at least once each year on its enforcement of the provisions of Title 15, chapter 70, part 3, pursuant to the authority provided in subsection (6)(c) and on any impacts that enforcement has had on the state special revenue fund.

Section 9. Section 61-10-141, MCA, is amended to read:

“61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds — authority to inspect diesel-powered vehicles. (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 as defined in 61-1-132, by means of either portable or stationary scales and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles.

(b) ~~That person~~ *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 vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), 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.

~~(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement effort.~~

~~(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:~~

~~(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;~~

~~(b) issue summons;~~

~~(c) accept bail;~~

~~(d) serve warrants for arrest;~~

~~(e) make reasonable inspections of cargo carried by commercial motor vehicles;~~

~~(f) make reasonable safety inspections of commercial motor vehicles used by motor carriers; and~~

~~(g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.~~

~~(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation who is appointed pursuant to 61-12-201 has:~~

~~(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203;~~

~~(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120~~

that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained; and

(c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.

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

Section 10. Section 61-12-205, MCA, is amended to read:

“61-12-205. Power to inspect vehicle registration, receipts, and other documents. Employees of the department *designated or* appointed *as peace officers* under [section 8] or 61-12-201 may when officially dressed make reasonable ~~inspection~~ inspections of vehicle registration receipts, department receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana.”

Section 11. Section 61-12-206, MCA, is amended to read:

“61-12-206. Offenses for which arrest authorized. Employees *designated or* appointed *as peace officers* under [section 8] or 61-12-201 may make arrests for violations of the following statutory provisions:

- (1) chapters 3 and 5 of this title, but only if the vehicle involved is subject to 61-10-141;
- (2) chapter 10 of this title;
- (3) part 3, chapter 4, of this title;
- (4) 15-24-201 through 15-24-205;
- (5) Title 15, chapter 70, parts 2 and 3;
- (6) ~~44-1-1005~~ [section 8] and safety rules adopted under that section;
- (7) Title 69, chapter 12.”

Section 12. Section 61-12-208, MCA, is amended to read:

“61-12-208. Duty upon making arrest — power to fix and accept bail. Employees *designated or* appointed *as peace officers* under [section 8] or 61-12-201, upon making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person who is arrested may be detained for a reasonable time for the purpose of issuing the notice or of awaiting the arrival of another peace officer who has been called to the scene, or the person may be transported, as provided in 46-7-101. If the employee accepts bail, the employee shall give a signed receipt to the offender, setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond.”

Section 13. Section 76-13-601, MCA, is amended to read:

“76-13-601. Unlawful transportation of trees and boughs. (1) A person may not transport on the ways of this state more than five coniferous trees without having possession of a bill of sale showing ownership of the trees. The bill of sale shall specify:

- (a) the date of its execution;
- (b) the name and address of the vendor or donor of the trees;
- (c) the name and address of the vendee or donee of the trees;
- (d) the number of trees, by species, sold or transferred by the bill of sale; and
- (e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

- (a) the transportation of trees with their roots intact;
- (b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;
- (c) the transportation of coniferous trees by the owner of the land from which they were taken or the owner’s agent, provided that agent has possession of a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested; or
- (d) the transportation of coniferous trees by a common carrier.

(3) A person may not transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation ~~as designated or appointed as a peace officer~~ under ~~[section 8] or 61-12-201~~, or an agent of the department of natural resources and conservation.

(5) A person who violates this section shall be punished by a fine not to exceed \$500, imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, “ways of this state” means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.”

Section 14. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 61, chapter 10, part 1, and the provisions of Title 61, chapter 10, part 1, apply to [section 8].

Section 15. Contingent voidness. If [section 8] of House Bill No. 35, exempting the Montana highway patrol from vacancy savings, is not passed and approved, [this act] is void.

Approved April 21, 2005

CHAPTER NO. 367

[SB 500]

AN ACT GENERALLY REVISING ELECTION LAWS TO FACILITATE VOTING BY DISABLED ELECTORS; PROVIDING THAT A DISABLED ELECTOR MAY USE A FINGERPRINT OR IDENTIFYING MARK INSTEAD OF A SIGNATURE; PROVIDING THAT A DISABLED ELECTOR MAY DESIGNATE ANOTHER PERSON AS THE ELECTOR'S AGENT; PROVIDING THAT AN ELECTION ADMINISTRATOR OR ELECTION JUDGE MAY SIGN FOR A DISABLED ELECTOR; DIRECTING THE SECRETARY OF STATE TO ADOPT RULES; REQUIRING NEW POLLING PLACES TO CONFORM TO THE ACCESSIBILITY STANDARDS UNDER THE AMERICANS WITH DISABILITIES ACT; REQUIRING ELECTION JUDGES TO ASK A DISABLED ELECTOR ENTERING A POLLING PLACE IF ASSISTANCE IS DESIRED; AND AMENDING SECTIONS 13-3-205, 13-13-114, 13-13-119, AND 13-13-213, MCA.

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

Section 1. Fingerprint, mark, or agent for disabled electors — rulemaking. (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector's identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to this title and for delivering the disabled elector's absentee ballot application to the county election administrator as provided in 13-13-213.

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an agent, election administrator, or election judge signs or marks a document for an elector pursuant to this section, the agent, election administrator, or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint.

Section 2. Section 13-3-205, MCA, is amended to read:

“13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. (1) (a) The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places. ~~The~~

(b) For polling places approved pursuant to this subsection (1) prior to [the effective date of this act], the standards, whenever possible, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.

(2) Polling places approved on or after [the effective date of this act] must comply with the accessibility standards in the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.”

Section 3. 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, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

~~(3) If the elector is not able to sign the elector’s name to the precinct register, a fingerprint or other identifying mark may be used.~~

~~(4)(3) If the elector fails or refuses to sign the elector’s name or, if unable to write, fails to provide a fingerprint or other identifying mark the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to [section 1] is not provided, the elector may cast a provisional ballot as provided in 13-13-601.”~~

Section 4. 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.

~~(1)(2) The~~ An election judge or an individual chosen by the disabled elector as specified in subsection ~~(4)~~ (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking ~~his~~ the elector’s ballot.

~~(2)~~(3) The election judges shall require ~~the~~ a declaration of disability by the elector ~~to~~. *The declaration must be made under oath and may administer the oath, which must be administered by an election judge.*

~~(3)~~(4) The elector may be assisted by two judges who represent different parties. The judges ~~must~~ 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.

~~(4)~~(5) Instead of assistance as provided in subsection ~~(3)~~ (4), the elector may request the assistance of any individual ~~whom he the elector~~ designates to the judges to aid ~~him the elector~~ in the marking of ~~his the elector's~~ ballot, ~~and the~~. An individual ~~chosen~~ designated to assist the elector shall sign ~~his 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 ~~his the elector's~~ employer, or an officer or agent of the elector's union.

~~(5)~~(6) No elector other than the ~~one~~ elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom ~~he the elector~~ intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of ~~his the elector's~~ ballot."

Section 5. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection (3), the elector shall mail the application directly to the election administrator or deliver the application in person to the election administrator. With the exception of an immediate family member, as defined in 15-30-602, ~~or~~ a guardian, *or an agent designated pursuant to [section 1]*, a third party may not collect applications for absentee ballots from electors and forward the applications to the election administrator.

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

(3) In lieu of the requirement provided in subsection (1), 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 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, the special absentee election board shall provide a ballot to the elector."

Section 6. 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)(b) of this section, as soon as the official paper absentee ballots are printed, the election administrator shall immediately send by 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 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 [section 1]*;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) 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 remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(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 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 1, and the provisions of Title 13, chapter 1, part 1, apply to [section 1].

Approved April 21, 2005

CHAPTER NO. 368

[HB 71]

AN ACT PROVIDING THAT AN INDIVIDUAL WHO IS SEEKING LICENSURE AS A MORTGAGE BROKER AND WHO IS THE SOLE OWNER OF AN ENTITY SEEKING LICENSURE AS A MORTGAGE BROKER SHALL PAY A SINGLE LICENSE APPLICATION FEE AND A SINGLE LICENSE RENEWAL FEE; CLARIFYING THAT A DESIGNATED MANAGER MUST BE AN INDIVIDUAL LICENSED AS A MORTGAGE BROKER; AMENDING SECTIONS 32-9-117 AND 32-9-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 32-9-117, MCA, is amended to read:

“32-9-117. Fees — license renewal — disposition of fees. (1) (a) *Except as provided in subsection (1)(b), an* ~~An~~ individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500. ~~A~~ A loan originator shall pay an initial nonrefundable license application fee of \$400. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(b) *An individual who is seeking licensure as a mortgage broker and who is the sole owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of \$500.*

(2) The license of a mortgage broker or loan originator is valid for a 1-year period and expires on June 30. Every licensee shall, on or before May 31 of the year, pay to the department a renewal fee in an amount set by the department by rule. *The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b) that are licensed as mortgage brokers. An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager.* The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.

(4) All fees collected under this section must be deposited in the department’s state special revenue fund to be used by the department in administering the provisions of this part.”

Section 2. Section 32-9-122, MCA, is amended to read:

“32-9-122. Requirement for designated manager. (1) A mortgage broker that is not a sole proprietorship shall designate to the department ~~a~~ *an individual* licensed *as a* mortgage broker within its organization as the designated manager of the organization.

(2) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker shall designate another *individual* licensed *as a* mortgage broker as designated manager and shall submit information in writing to the department establishing that the subsequent designated manager is in compliance with the provisions of this part.”

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

Approved April 21, 2005

CHAPTER NO. 369

[HB 587]

AN ACT PROVIDING THAT BENEFITS UNDER THE HIGHWAY PATROL OFFICERS’, MUNICIPAL POLICE OFFICERS’, OR FIREFIGHTERS’ RETIREMENT SYSTEMS THAT ARE PAYABLE TO A DEPENDENT CHILD

MUST BE PAID TO A TRUST IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 19-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 19-2-803, MCA, is amended to read:

“19-2-803. Payment to custodian of minor beneficiary. (1) ~~If~~ *Except as provided in subsection (2), if* any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

- (a) a surviving parent, if any;
- (b) a parent awarded custody of the minor in a divorce proceeding;
- (c) a custodian designated under Title 72, chapter 26;
- (d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
- (e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) If any benefit payable from the highway patrol officers' retirement system under chapter 6 of this title, the municipal police officers' retirement system under chapter 9 of this title, or the firefighters' unified retirement system under chapter 13 of this title is payable to a statutory beneficiary who is a dependent child, as defined under the provisions of that system, of a system member and the system member has established a trust for the dependent child, then the benefit must be paid to the trustee of that trust.

~~(2)~~(3) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person *receiving benefit payments pursuant to this section* shall account to the minor for the money when the minor reaches the age of majority.”

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

Approved April 21, 2005

CHAPTER NO. 370

[SB 384]

AN ACT CLARIFYING THE AUTHORITY OF THE SECRETARY OF STATE TO ADOPT RULES FOR THE EFFECTIVE ADMINISTRATION OF THE SECRETARY OF STATE'S DUTIES RELATING TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTIONS 2-4-306 AND 2-15-401, MCA.

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

Section 1. Section 2-4-306, MCA, is amended to read:

“2-4-306. Filing, format, and adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) ~~The Pursuant to 2-15-401, the secretary of state may prescribe a rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.~~

(3) ~~In the event that~~ *If* the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."

Section 2. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state — authority. (1) In addition to the duties prescribed by the constitution, ~~it is the duty of the secretary of state to~~ *shall:*

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to ~~do the same~~ *take and file receipts for all books distributed by the county clerk*;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

(h) keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;

(i) file in the secretary of state's office descriptions of seals in use by the different state officers;

(j) discharge the duties of a member of the board of examiners and of the board of land commissioners and all other duties required by law;

(k) register marks as provided in Title 30, chapter 13, part 3;

(l) report annually to the legislative services division all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(m) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

(2) The secretary of state may:

(a) develop and implement a statewide electronic filing system as described in 2-15-404;

(b) *adopt rules for the effective administration of the secretary of state's duties relating to the Montana Administrative Procedure Act established in Title 2, chapter 4.*"

Approved April 25, 2005

CHAPTER NO. 371

[SB 525]

AN ACT ESTABLISHING A QUALITY SCHOOLS INTERIM COMMITTEE TO ASSESS THE EDUCATIONAL NEEDS OF MONTANA'S CHILDREN, DETERMINE THE COSTS OF A BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, DETERMINE THE

STATE'S SHARE OF THE COSTS, AND CONSTRUCT A FUNDING FORMULA THAT EQUITABLY DISTRIBUTES THE STATE'S SHARE OF THE COSTS OF THE BASIC SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Quality schools interim committee — duties. (1) There is a quality schools interim committee. The committee shall continue the work of the joint select committee on education funding established during the 59th legislative session. By December 1, 2005, the committee shall:

(a) assess the educational needs of the children served by the basic system of free quality public elementary and secondary schools in Montana, as defined by the legislature;

(b) determine the total costs of providing the basic system of free quality public elementary and secondary schools;

(c) determine the state's share of the total costs of a basic system of free quality public elementary and secondary schools;

(d) construct a funding formula that:

(i) is based on:

(A) the definition of a basic system of free quality public elementary and secondary schools adopted by the legislature;

(B) the assessment of educational needs conducted by the committee; and

(C) the work of the joint select committee on education funding as outlined in the select committee's final report;

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified by the legislature;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws;

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(vii) consolidates the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency; and

(e) prepare the appropriate legislation.

(2) The members of the committee are:

(a) four members of the house of representatives, two from each party, appointed by the speaker of the house in consultation with the house democratic leader and the house republican leader;

(b) four members of the senate, two from each party, appointed by the president of the senate; and

(c) as ex-officio, nonvoting members:

(i) the presiding officer of the board of public education or the presiding officer's designee;

(ii) the superintendent of public instruction or the superintendent's designee; and

(iii) the governor or the governor's designee.

(3) The committee shall select its presiding officer from among the voting members at the first meeting of the committee.

(4) The committee shall assess the educational needs of children and determine the costs of providing the basic system of free quality public elementary and secondary schools, as defined by the legislature, through one or more of the following:

(a) studies authorized or conducted by the committee;

(b) existing studies completed by reputable and reliable experts.

(5) In implementing the educational needs and cost analyses and in drafting a new funding formula, the committee:

(a) shall seek input from representatives from the board of public education, the office of public instruction, the governor's office, private organizations, professional educators, school trustees, and members of the public;

(b) may request assistance from other legislative and executive branch agencies; and

(c) shall examine the state's existing and projected financial resources as well as the needs and concerns of Montana taxpayers.

(6) The committee is attached for administrative purposes to the legislative services division.

(7) On or before October 1, 2005, the committee shall issue a report on the committee's preliminary findings and recommendations.

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

Approved April 25, 2005

CHAPTER NO. 372

[SB 2]

AN ACT RECOGNIZING THE AUTHORITY OF STATE AGENCIES AND UNITS OF LOCAL GOVERNMENT TO DISPLAY THE NATIONAL MOTTO AND OTHER HISTORICAL DOCUMENTS IN OR ON PUBLIC BUILDINGS OR ON STATE LAND; PROHIBITING THE CENSORSHIP OF AMERICAN HISTORY OR HERITAGE BASED ON RELIGIOUS REFERENCES IN WRITINGS, DOCUMENTS, OR RECORDS; PROHIBITING THE SELECTION OF WRITINGS, DOCUMENTS, OR MATERIAL FOR DISPLAY IN ORDER TO ADVANCE A PARTICULAR RELIGIOUS, PARTISAN, OR SECTARIAN PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Display of historical writings or documents in or on public buildings or on state land — definitions. (1) Subject to the provisions of subsection (3), a state agency or unit of local government may

display the national motto, "in God we trust", as adopted by congress in 1998 (36 U.S.C. 302), in or on public buildings or state-owned land occupied by a state agency or unit of local government. For purposes of this section, the use of the word "God" is not intended to further the establishment of any specific religion or set of religious beliefs or to dissuade the free exercise of any religion or set of religious beliefs.

(2) In addition to the national motto, the legislature encourages the display of other historical documents in or on public buildings and state-owned land, including but not limited to:

- (a) the Declaration of Independence;
- (b) the United States constitution;
- (c) the pledge of allegiance;
- (d) the national anthem;
- (e) the Mayflower Compact;
- (f) the writings, speeches, documents, and proclamations of the founders and the presidents of the United States;
- (g) writings from United States supreme court decisions;
- (h) organic documents from the precolonial, colonial, revolutionary, federalist, and postfederalist eras;
- (i) acts of the United States congress, including the published text of the Congressional Record;
- (j) United States treaties; and
- (k) any other writings, documents, or proclamations that are permanently displayed in a historic context in the United States capitol.

(3) The content of any writing, document, or record described in subsection (2) may not be censored solely because the writing, document, or record contains religious references, nor may any writings, documents, or material be selected for display in order to advance a particular religious, partisan, or sectarian purpose.

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

- (a) "Local government" has the meaning provided in 1-2-116.
- (b) "State agency" has the meaning provided in 1-2-116.

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

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

Approved April 25, 2005

CHAPTER NO. 373

[SB 18]

AN ACT PROVIDING FOR AN ADDITIONAL DISTRICT COURT JUDGE FOR THE 18TH JUDICIAL DISTRICT; PROVIDING FOR PROVISIONAL APPOINTMENT TO THE POSITION; AMENDING SECTION 3-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

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

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

Section 2. Provisional appointment — election. The additional judge for the 18th judicial district must be appointed pursuant to the provisions of Title 3, chapter 1, part 10, to take office on or after January 2, 2006. There must be an election for the office at the general election to be held in November 2006 for a 6-year term to begin in January 2007.

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

Approved April 25, 2005

CHAPTER NO. 374

[SB 58]

AN ACT REVISING STATUTES GOVERNING PUBLIC BOND ISSUES FOR THE PURPOSE OF ELIMINATING OBSOLETE PROVISIONS AND PROVIDING ADDITIONAL FLEXIBILITY; REPEALING SPECIAL PROVISIONS GOVERNING LONG-RANGE BUILDING PROGRAM BONDS AND EMPLOYMENT SECURITY BUILDING BONDS; AMENDING SECTIONS 17-5-302, 17-5-304, 17-5-802, 17-5-803, 17-5-805, AND 18-2-101, MCA; REPEALING SECTIONS 17-5-401, 17-5-402, 17-5-403, 17-5-404, 17-5-407, 17-5-408, 17-5-409, 17-5-410, 17-5-411, 17-5-412, 17-5-413, 17-5-414, 17-5-415, 17-5-416, 17-5-417, 17-5-421, 17-5-423, 17-5-424, 17-5-425, 17-5-426, 17-5-430, 17-5-431, 17-5-432, 17-5-433, 17-5-601, 17-5-602, 17-5-603, 17-5-604, 17-5-605, 17-5-606, 17-5-607, 17-5-608, 17-5-609, 17-5-610, 17-5-611, 17-5-612, 17-5-613, 17-5-614, 17-5-615, 17-5-616, 17-5-617, 17-5-618, 17-5-619, AND 17-5-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-5-302, MCA, is amended to read:

“17-5-302. Character of bonds — ~~amortization or serial.~~ ~~(1) All refunding bonds or debentures issued by the board of examiners under the provisions of this part shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semiannual payments due thereon, which coupons shall bear the signature of each member of the board of examiners.~~

~~(2)~~(1) The board of examiners shall prescribe all ~~other~~ details for the form, notice, and time of sale of the bonds or debentures.

~~(3)~~(2) ~~They shall~~ *The bonds or debentures must* be registered in the office of the state treasurer in a book to be provided for that purpose.”

Section 2. Section 17-5-304, MCA, is amended to read:

“17-5-304. Cost and expense of refunding. The board of examiners may ~~require the purchaser to bear~~ pay the cost and expense of refunding any issue of bonds or debentures in connection with the bid submitted, or the cost and expense may ~~to be paid out of the sinking and interest fund when there is money in such~~ *from the proceeds of the bonds or from the general* fund. ~~The balance remaining in such sinking and interest fund shall be transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law.”~~

Section 3. Section 17-5-802, MCA, is amended to read:

“17-5-802. Authority to issue general obligation bonds and notes. (1) When authorized by and within the limits of a bond act and as provided in this part, the board may issue and sell bonds of the state in ~~such the manner as~~ *that* it considers necessary and proper to provide funds for the purpose set forth in the bond act.

(2) The full faith and credit and taxing powers of the state must be pledged for the payment of all bonds and notes issued pursuant to this part, with all interest ~~thereon on the bonds and notes~~ and premiums payable upon the redemption ~~thereof of the bonds and notes~~. All principal, interest, and redemption premium, if any, becoming due during a fiscal year must be included in the state budget for ~~such that~~ *fiscal* year, and sufficient ~~revenues~~ *revenue* must be appropriated for ~~the payment thereof of principal, interest, and redemption premiums~~ from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for ~~the payment thereof of principal, interest, and redemption premiums~~. ~~No bonds~~ *Bonds* may ~~not~~ be issued to cover deficits incurred because appropriations exceeded anticipated revenue. Money transferred for the payment of bonds and notes must be deposited in the debt service account.

~~(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4.”~~

Section 4. Section 17-5-803, MCA, is amended to read:

“17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) ~~In~~ *Subject to the limitations contained in this part and in the bond act and in the* furtherance of each bond act, bonds may be issued by the board upon request of the department. *The bonds may be issued in such the* denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with ~~such~~ provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at ~~such a~~ *such* a rate or rates, maturing at ~~such~~ *such* times not exceeding 30 years from date of issue, subject to redemption at ~~such~~ *such* earlier times and prices and on ~~such~~ *such* notice, and payable at the office of ~~such the~~ *such the* fiscal agency of the state as the board ~~shall determine~~ *determines*, ~~subject to the limitations contained in this part and in the bond act.~~

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. ~~Bonds and any interest coupons appurtenant thereto 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. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all ~~such~~ bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board, *in its discretion*, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available ~~therefor~~ *for these purposes* in the general fund or from the proceeds of the bonds, ~~in the discretion of the board~~.

(5) All proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.”

Section 5. Section 17-5-805, MCA, is amended to read:

“17-5-805. Bond anticipation notes — when issued — payment of principal and interest. (1) When the board has been authorized to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of the money to be derived from the sale of the bonds. The notes must be designated as “bond anticipation notes”. The proceeds of the sale of the bond anticipation notes may be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than ~~1 year~~ *3 years* after the date of issue may be issued from time to time as the proceeds ~~thereof~~ are needed. ~~Such~~ *The* notes must be authorized by the board and must have ~~such~~ terms and details ~~as that~~ may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

- (a) describe the need for the proceeds of the notes to be issued; and
- (b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of ~~such~~ *the* notes; and

- (iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts,

the maturities, the rate or rates of interest, and ~~such~~ other terms and details of the notes ~~as that~~ may be considered appropriate by the board, or the state treasurer in the event of ~~such a~~ delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless ~~and until~~ the board revokes ~~such the~~ authority to refund; and

(d) such other terms and conditions ~~as that~~ the board may consider appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on ~~such~~ lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing ~~such~~ terms and conditions ~~as that~~ the board may authorize in the resolution approving them."

Section 6. Section 18-2-101, MCA, is amended to read:

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

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

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

(b) at a state institution;

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

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

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

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

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

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in ~~17-5-401 and~~ 17-5-801."

Section 7. Repealer. Sections 17-5-401, 17-5-402, 17-5-403, 17-5-404, 17-5-407, 17-5-408, 17-5-409, 17-5-410, 17-5-411, 17-5-412, 17-5-413, 17-5-414, 17-5-415, 17-5-416, 17-5-417, 17-5-421, 17-5-423, 17-5-424, 17-5-425, 17-5-426, 17-5-430, 17-5-431, 17-5-432, 17-5-433, 17-5-601, 17-5-602, 17-5-603, 17-5-604, 17-5-605, 17-5-606, 17-5-607, 17-5-608, 17-5-609, 17-5-610, 17-5-611, 17-5-612, 17-5-613, 17-5-614, 17-5-615, 17-5-616, 17-5-617, 17-5-618, 17-5-619, and 17-5-620, MCA, are repealed.

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].

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

Approved April 25, 2005

CHAPTER NO. 375

[SB 70]

AN ACT REVISING THE NOTICE REQUIREMENTS IN AN ACTION TO QUIET TITLE TO A TAX DEED; REQUIRING THAT NOTICE BE GIVEN TO ALL TRUE OWNERS WHOSE NAMES AND ADDRESSES ARE REASONABLY ASCERTAINABLE; AND AMENDING SECTION 15-18-411, MCA.

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

Section 1. Section 15-18-411, MCA, is amended to read:

“15-18-411. Action to quiet title to tax deed — notice. (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax proceedings or a tax sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

- (i) own the property;
- (ii) have any interest in or lien upon the property;
- (iii) have a right to redeem the property; or
- (iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is referred to as the true owner.

(c) Except as provided in subsection (1)(d), the order described in subsection (1)(a) may command the true owner to:

- (i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax sale to preserve the property or to make improvements ~~thereon~~ *on the property* while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why ~~such~~ *the* payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether ~~he~~ *the owner* is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and ~~who is, at that time, known to be in the state of Montana~~ *whose name and address are reasonably ascertainable*.

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer.”

Approved April 25, 2005

CHAPTER NO. 376

[SB 74]

AN ACT PROVIDING THAT CERTAIN LAND THAT IS NOT ELIGIBLE FOR VALUATION, ASSESSMENT, AND TAXATION AS AGRICULTURAL LAND IS CONSIDERED TO BE NONQUALIFIED AGRICULTURAL LAND; PROVIDING THAT LAND WITH COVENANTS OR OTHER RESTRICTIONS THAT PROHIBIT AGRICULTURAL USE MAY NOT BE CLASSIFIED OR VALUED AS NONQUALIFIED AGRICULTURAL LAND; AMENDING SECTIONS 15-6-133, 15-7-202, AND 15-10-420, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-6-133, MCA, is amended to read:

“15-6-133. Class three property — description — taxable percentage. (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon

which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), *which are considered to be nonqualified agricultural land*. ~~The Nonqualified agricultural land~~ may not be devoted to a commercial or industrial purpose. *Nonqualified agricultural land is valued at the productive capacity value of grazing land, at the average grade of grazing land.*

(2) ~~Class~~ Subject to subsection (3), class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The *taxable value* of land described in subsection (1)(c) is ~~valued at the productive capacity value of grazing land, at the average grade of grazing land,~~ and the taxable value is computed by multiplying the value of the land by seven times the taxable *percentage* rate for agricultural land.”

Section 2. Section 15-7-202, MCA, is amended to read:

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

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner’s immediate family members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Land may not be classified or valued as agricultural *land* or *nonqualified agricultural land* if it is ~~subdivided land with~~ *has stated covenants or other restrictions that effectively prohibiting prohibit* its use for agricultural purposes. ~~For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.~~

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

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

(7) For the purposes of this part, growing timber is not an agricultural use."

Section 3. Section 15-10-420, MCA, is amended to read:

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

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

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

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

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

- (a) annexation of real property and improvements into a taxing unit;
- (b) construction, expansion, or remodeling of improvements;
- (c) transfer of property into a taxing unit;
- (d) subdivision of real property; and
- (e) transfer of property from tax-exempt to taxable status.

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

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

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

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

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

- (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

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

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360,

20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

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

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

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

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

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

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

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

Section 4. Coordination instruction. If House Bill No. 72 [LC 370] is passed and approved, then [section 1 of this act] and [section 1] of House Bill No. 72 [LC 370], amending 15-6-133, are void and 15-6-133 must be amended as follows:

"15-6-133. Class three property — description — taxable percentage. (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), *which are considered to be nonqualified agricultural land*. ~~The Nonqualified agricultural land~~ may not be devoted to a commercial or industrial purpose. *For the tax year beginning January 1, 2006, through the tax year ending December 31, 2008, nonqualified agricultural land*

is valued at the productive capacity value of grazing land, at the average grade of grazing land. For tax years beginning after December 31, 2008, nonqualified agricultural land is valued at the statewide average productive capacity value of grazing land.

(2) ~~Class~~ Subject to subsection (3), class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The *taxable value* of land described in subsection (1)(c) is ~~valued at the productive capacity value of grazing land, at the average grade of grazing land,~~ and the taxable value is computed by multiplying the value of the land by seven times the taxable *percentage* rate for agricultural land.”

Section 5. Applicability. [This act] applies to property tax years beginning after December 31, 2005.

Approved April 25, 2005

CHAPTER NO. 377

[SB 82]

AN ACT REVISING THE DEFINITION OF “INTERMEDIATE CARE FACILITY” FOR PURPOSES OF THE UTILIZATION FEE ON RESIDENT BED DAYS; INCREASING THE UTILIZATION FEE FROM 5 PERCENT TO 6 PERCENT; AMENDING SECTIONS 15-67-101 AND 15-67-102, 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 15-67-101, MCA, is amended to read:

“15-67-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Calendar quarter” means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

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

(3) “Intermediate care facility” or “facility” means an intermediate care facility for the developmentally disabled licensed pursuant to 50-5-238 or an intermediate care facility for the mentally retarded that is in compliance with the federal standards provided in 42 CFR, part 483, subpart I, for medicaid conditions of participation.

(4) (a) “Quarterly revenue” means all revenue received during a calendar quarter by a facility operating in Montana for providing for client care.

(b) For facilities operated by the state, the term means total expenditures for the quarter.

(5) “Report” means the report of resident bed days required in 15-67-201.

(6) “Resident” means an individual obtaining care in an intermediate care facility.

(7) “Resident bed day” means each 24-hour period that a resident in an intermediate care facility is present in the facility and receiving care or in which

a bed is held for a resident while the resident is on temporary leave from the facility. The term includes all benefit days as defined for medicare reporting purposes in section 242.1 of Publication 12, the Skilled Nursing Facility Manual, published by the centers for medicare and medicaid services, regardless of the source of payment.

(8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an intermediate care facility, as provided in 15-67-102. (Void on occurrence of contingency—sec. 17, Ch. 531, L. 2003—see chapter compiler's comment.)"

Section 2. Section 15-67-102, MCA, is amended to read:

"15-67-102. (Temporary) Utilization fee for resident bed days. (1) Each calendar quarter, an intermediate care facility shall pay to the department a utilization fee for each resident bed day calculated as provided in subsection (2).

(2) The utilization fee is ~~5%~~ 6% of the intermediate care facility's quarterly revenue divided by the resident bed days for the quarter.

(3) In accordance with the provisions of 15-1-501, all proceeds of the utilization fee, including penalty and interest, must be deposited as follows:

(a) 30% in the state general fund; and

(b) 70% in an account in the state special revenue fund established pursuant to 53-6-1101 to the credit of the department of public health and human services to finance, administer, and provide health and human services. (Void on occurrence of contingency—sec. 17, Ch. 531, L. 2003—see chapter compiler's comment.)"

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

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

Approved April 25, 2005

CHAPTER NO. 378

[SB 91]

AN ACT ALLOCATING TWO SPECIAL WILD BUFFALO LICENSES ANNUALLY TO INDIVIDUALS DESIGNATED BY THE MONTANA TRIBES FREE OF CHARGE; PROVIDING THAT WILD BUFFALO TAKEN PURSUANT TO THE SPECIAL LICENSES BE HUNTED AND USED IN THE MANNER TRADITIONAL TO EACH TRIBE; DESIGNATING THE TERMS AND CONDITIONS OF THE SPECIAL TRIBAL LICENSES; PROVIDING THAT ANY ADDITIONAL WILD BUFFALO LICENSES BE MADE AVAILABLE FOR PUBLIC HUNTING TO BE USED AND SOLD COINCIDENT WITH THE ISSUANCE AND USE OF SPECIAL WILD BUFFALO LICENSES ANNUALLY OFFERED TO INDIVIDUALS DESIGNATED BY THE MONTANA TRIBES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, for millennia, wild buffalo roamed the vast, open spaces of Montana, followed in their migration by the ancient peoples of this state who relied on the buffalo for food, shelter, and clothing—indeed, for life itself; and

WHEREAS, through the ages, Montana tribes recognized this gift of life given by the Creator to the people through the buffalo and thus hunted the buffalo with utmost respect and appreciation, developing traditional ceremonies and practices that honored that gift; and

WHEREAS, beginning in the late 1880s, poaching and hunting reduced the population of the native wild buffalo herd in Yellowstone National Park to only 25 by 1901, so to avoid extinction, the park herd was supplemented by 21 buffalo from tribal captive herds in 1902, thereby keeping the gift alive for future generations of Americans; and

WHEREAS, as Yellowstone Park buffalo thrived in their protected environment, they achieved numbers that now provide for limited hunting in Montana when they migrate into this state and are authorized for hunting by the state veterinarian and the Department of Livestock; and

WHEREAS, buffalo meat is used as part of the treatment of tribal members who suffer from diabetes; and

WHEREAS, it is a fitting gesture by the State of Montana and the Legislature to honor and return the gift of the buffalo to Montana tribes for hunting and use in the traditional ceremonial ways.

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

Section 1. 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), 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) Blackfeet 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.

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 band of Chippewa.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, chapter 2, part 7, apply to [section 1].

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

Section 5. Termination. [This act] terminates July 1, 2015.

Approved April 25, 2005

CHAPTER NO. 379

[SB 92]

AN ACT CLARIFYING THE METHOD OF APPRAISING RESIDENTIAL AND COMMERCIAL CONDOMINIUM PROPERTY FOR PROPERTY TAX PURPOSES; AMENDING SECTIONS 15-8-111, 15-8-511, AND 15-8-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-8-111, MCA, is amended to read:

“15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the ~~capitalization of net income~~ *capitalization-of-net-income* method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost

exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; ~~and~~

(c) *for condominium property, the department shall establish the value as provided in subsection (4); and*

(d) as otherwise authorized in Titles 15 and 61.

(4) (a) *Subject to subsection (4)(c), if sufficient, relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium units, the department is not required to separately allocate the value of the common elements to the individual units being valued.*

(b) *Subject to subsection (4)(c), if sufficient, relevant information on income is made available to the department, the department shall use the capitalization-of-net-income method to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.*

(c) *If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the construction-cost method. When using the construction-cost method, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.*

(5) For purposes of taxation, assessed value is the same as appraised value.

~~(5)(6)~~ (6) The taxable value for all property is the percentage of market or assessed value established for each class of property.

~~(6)~~(7) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-201(1)(z) and (1)(aa).

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

~~(7)~~(8) Land and the improvements on the land are separately assessed when any of the following conditions occur:

- (a) ownership of the improvements is different from ownership of the land;
- (b) the taxpayer makes a written request; or
- (c) the land is outside an incorporated city or town.”

Section 2. Section 15-8-511, MCA, is amended to read:

“15-8-511. Undivided interest in common elements of condominium project — definition. (1) Each unit of a condominium project is considered a parcel of real property subject to separate assessment and taxation. Each unit owner must be assessed for the unit owner’s percentage of undivided interest in elements of the condominium project, except parks, owned in common by the unit owners. The percentage of undivided interest stated in a unit declaration is the figure to be used in assessing common elements under this section.

(2) ~~Unless otherwise agreed by all the unit owners, for purposes of assessment common elements include:~~

~~(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;~~

~~(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;~~

~~(c) the basements, yards, gardens, parking areas, outside storage spaces, private pathways, sidewalks, and private roads;~~

~~(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;~~

~~(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;~~

~~(f) the premises for the lodging of janitors or caretakers of the property; and~~

~~(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use As used in this chapter, "common elements" has the meaning provided in 70-23-102."~~

Section 3. Section 15-8-512, MCA, is amended to read:

"15-8-512. Common elements serving residential or commercial development. (1) Each lot in a residential or commercial development, regardless of whether improved or unimproved, is considered a parcel of real property subject to separate assessment and taxation. ~~Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots~~ *The value of common elements must be allocated to each lot owner pursuant to 15-8-111.*

(2) The assessment provisions of subsection (1) are not negated by the existence or formation of a contract between the developer and lot purchasers or an agreement among lot purchasers that would attempt to obligate the developer or an association of lot owners to pay taxes on the common elements."

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

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

Approved April 25, 2005

CHAPTER NO. 380

[SB 93]

AN ACT REQUIRING THAT MONTHLY AND FISCAL YEAREND REPORTS CONCERNING THE COST OF MEDICAID SERVICES AND THE DEPARTMENTAL BUDGET BE PROVIDED TO THE LEGISLATIVE FINANCE COMMITTEE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; DELETING EXISTING REQUIREMENTS CONCERNING MEDICAID REPORTS; AMENDING SECTION 53-6-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-6-110, MCA, is amended to read:

"53-6-110. Report and recommendations on medicaid funding. (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health care facilities plan.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health care facilities plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) ~~Whenever the department of public health and human services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting. Beginning November 15 of each year through June 15 of the following year, the department of public health and human services shall provide to the legislative finance committee monthly reports containing estimates of the cost for medicaid services and a budget status report for all department programs. The department shall also provide a fiscal yearend summary of medicaid costs and the department budget status report prior to the first legislative finance committee meeting following the end of the fiscal year. The reports must be presented in a format mutually agreed to by the legislative finance committee and the department.~~

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

Approved April 25, 2005

CHAPTER NO. 381

[SB 118]

AN ACT ESTABLISHING THE MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT; PROVIDING DEFINITIONS; PROHIBITING EMPLOYMENT DISCRIMINATION BASED ON MEMBERSHIP IN THE STATE'S ORGANIZED MILITIA; CLARIFYING AND UPDATING PROVISIONS AUTHORIZING LEAVES OF ABSENCE FOR ORGANIZED MILITIA MEMBERS AND THE RIGHT OF MEMBERS TO RETURN TO EMPLOYMENT WITHOUT LOSS OF SPECIFIED BENEFITS; CLARIFYING AND UPDATING MILITARY LEAVE PROVISIONS FOR ELECTED OFFICIALS; PROVIDING FOR ENFORCEMENT BY SPECIFYING COMPLAINT PROCEDURES, INFORMAL RESOLUTION, AND COURT REMEDIES; SPECIFYING THE DUTIES AND POWERS OF THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY AND THE STATE ATTORNEY GENERAL WITH RESPECT TO COMPLAINTS; PROVIDING RULEMAKING AUTHORITY; REVISING PROVISIONS RELATED TO PAID MILITARY LEAVE FOR PUBLIC EMPLOYEES; UPDATING MILITARY LEAVE PROVISIONS RELATED TO DISQUALIFICATION FOR UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTIONS 2-16-112, 2-16-501, 7-4-2208, 10-1-604, 10-1-615, 19-2-707, 39-51-1214, AND 39-51-2302, MCA; REPEALING SECTIONS 10-1-603, 10-2-211, 10-2-212, 10-2-213, 10-2-214, 10-2-221, 10-2-222, 10-2-223, 10-2-224, 10-2-225, 10-2-226,

10-2-227, AND 10-2-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 18] may be cited as the “Montana Military Service Employment Rights Act”.

Section 2. Purpose — legislative intent. The purpose of [sections 1 through 18] is to recognize the importance of the service performed by Montana national guard members and to protect the employment rights of national guard members who may be called to state active duty when there is a state emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and intends that [sections 1 through 18] will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues.

Section 3. Definitions. Unless the context requires otherwise, as used in [sections 1 through 18], the following definitions apply:

(1) “Department” means the department of labor and industry established in 2-15-1701.

(2) “Elected official” means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.

(3) (a) “Employer” means any public or private person or entity providing employment in Montana.

(b) The term does not include the United States.

(4) “Federally funded military duty” means duty, including training, performed pursuant to orders issued under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the duty.

(5) “Member” means a member of the state’s organized militia provided for in 10-1-103.

(6) “Military service” includes both federally funded military duty and state active duty.

(7) (a) “State active duty” means duty performed by a member when a disaster or an emergency has been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution to include the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the active duty.

(b) The term does not include federally funded military duty.

Section 4. Rights under federal law. A person ordered to federally funded military duty is entitled to all of the employment and reemployment rights and benefits provided pursuant to the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq., and other applicable federal law.

Section 5. Prohibition against employment discrimination. An employer may not deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate

against, or threaten negative consequences against a person with regard to employment because of the person's membership, application for membership, or potential application for membership in the state organized militia or because the person may exercise or has exercised a right or may claim or has claimed a benefit under [sections 1 through 18].

Section 6. Entitlement to leave of absence. (1) A member ordered to state active duty is entitled to a leave of absence from the person's employment during the period of that state active duty.

(2) A leave of absence for state active duty may not be deducted from any sick leave, vacation leave, military leave, or other leave accrued by the member unless the member desires the deduction.

Section 7. Right to return to employment without loss of benefits — exceptions — definition. (1) Subject to the provisions of this section, after a leave of absence for state active duty, a member is entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state active duty.

(2) (a) If a member was a probationary employee when ordered to state active duty, the employer may require the member to resume the member's probationary period from the date when the member's leave of absence for state active duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member's leave of absence for state active duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer's health plan must provide that:

(A) a member may elect to not remain covered under the employer's health plan while the member is on state active duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer's health plan while the member is on state active duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii);

(ii) If a member's state active duty qualifies the member for coverage under the state of Montana's health insurance plan as an employee of the department of military affairs, the employer's health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state active duty is not required to cover any illness or injury caused or aggravated by state active duty.

(iv) If the member is a state employee prior to being ordered to state active duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member's state active duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer's pension plan must provide that when a member returns to employment from state active duty:

(i) the member's period of state active duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state active duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state active duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected; or

(v) the member's return to employment would cause the employer an undue hardship.

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state active duty of up to 30 days, the member returned to employment the next regular work shift following safe travel time plus 8 hours;

(ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state active duty; and

(iii) for state active duty of more than 180 days, the member returned to employment within 90 days of termination of the state active duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202.

Section 8. Leave of absence for elected officials — restoration to office. (1) If an elected official is ordered to military service, the official is entitled to a leave of absence for the duration of the military service.

(2) An elected official's leave of absence pursuant to this section does not create a vacancy in office or require the official to forfeit the office.

(3) If an acting official is appointed pursuant to [section 9], the leave of absence must be without pay.

(4) An elected official ordered to military service is entitled to the employment rights and benefits that would be provided to any other employee under the official's employer if the employee were on a leave of absence subject to the provisions of [sections 1 through 18].

(5) Upon returning from a leave of absence for military service, if an acting official was appointed pursuant to [section 9], the returning elected official is entitled to be restored to office for the official's unexpired term immediately upon the official's request after being released from the military service.

Section 9. Appointment of acting officials. (1) When an elected official is ordered to military service, an acting official must be appointed as provided in this section if:

(a) the elected official is precluded pursuant to federal law from performing the official duties of the office; or

(b) the elected official requests the appointment of an acting official.

(2) If an acting official is appointed, the acting official shall take any oath of office required to assume the office, shall exercise all the rights, powers, and duties vested in the office, and must be provided with all the employment rights and benefits associated with the position until the elected official is restored to office pursuant to [section 8(5)] or the elected official's term expires, whichever occurs first.

(3) (a) The governor shall appoint the acting official for any office elected by the state at large and for the office of district judge, public service commissioner, or any other elected regional or district office of the state.

(b) An acting official for a legislative district must be appointed using the procedures in 5-2-402.

(c) The board of county commissioners shall appoint the acting official for any elected office of a county.

(d) The city or town council shall appoint the acting official for any elected office of a city or town.

(4) For any elected office not covered under subsection (3), the governing body shall determine the method by which an acting official may be appointed pursuant to this section.

(5) An appointment of an acting official pursuant to this section must be made for a period not to exceed the unexpired term for the office and subject to the right of the elected official to be restored to the office upon returning from the military service, as provided in [section 8(5)].

Section 10. Procedure for filing a complaint. (1) A person entitled to rights or benefits under [sections 1 through 18] and who claims that an employer has failed or is about to fail to comply with the provisions of [sections 1 through 18] may file a complaint with the department as provided in this section.

(2) A complaint under this section must be:

(a) filed within 15 days after the member discovered the actions or practice alleged to constitute an employer's failure or imminent failure to comply with the provisions of [sections 1 through 18]; and

(b) submitted in writing to the department in a manner prescribed by the department.

(3) The department shall, upon request, provide technical assistance to a person wishing to file a complaint pursuant to this section.

Section 11. Assistance, investigation, and enforcement of complaints. (1) The department shall provide assistance to any person with respect to the employment rights and benefits to which the person is entitled

pursuant to [sections 1 through 18]. The department may request the assistance of federal or state agencies engaged in similar or related activities and utilize the assistance of volunteers.

(2) The department shall investigate each complaint submitted pursuant to [section 10]. The department shall initiate the investigation within 30 days of receiving the complaint. Within 60 days of receiving the complaint, the department shall make a finding about whether a violation of rights or benefits provided in [sections 1 through 18] has occurred or is about to occur and shall notify the complainant and the employer in writing of the finding.

(3) If the department's investigation finds that a violation of [sections 1 through 18] has occurred or is about to occur, the department shall attempt to resolve the matter by making a reasonable effort, including conference, conciliation, and persuasion, to provide redress to the complainant and ensure that the employer named in the complaint complies with the provisions of [sections 1 through 18].

(4) If the department fails to resolve the matter within 90 days of receiving the complaint, the department shall notify the complainant of the complainant's right to request that the department refer the complaint to the state attorney general under the provisions of [section 13].

Section 12. Enforcement and investigative powers of the department. To carry out its enforcement and investigative duties under [sections 1 through 18], the department has the power to:

(1) enter and inspect the places, question the employees, and investigate the facts, conditions, or matters that the department considers appropriate to determine whether an employer has violated or is about to violate the provisions of [sections 1 through 18] or that will aid the department in the enforcement of the provisions of this part; and

(2) administer oaths, examine witnesses, issue subpoenas, compel the attendance of witnesses, inspect papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits relevant to the department's duties under [sections 1 through 18].

Section 13. Referral of complaint to state attorney general. (1) A complaint that could not be successfully resolved pursuant to [section 11] must be referred by the department to the state attorney general if the complainant requests the referral pursuant to [section 11(4)].

(2) (a) Except as provided in subsection (2)(b), if the state attorney general is satisfied that the complaint has merit, the state attorney general may file a lawsuit on behalf of and act as an attorney for the complainant in seeking relief for the complainant.

(b) (i) Except as provided in subsection (2)(b)(ii), if the complaint is against a state agency, as defined in 2-15-102, notwithstanding an arrangement for the provision of legal services to the agency by the department of justice, the agency shall provide or obtain counsel for the agency.

(ii) If the complaint is against the department of justice, the department of administration, notwithstanding an arrangement for the provision of legal services to the department of administration by the department of justice, shall provide or obtain counsel for the department of justice.

(3) If the state attorney general sues pursuant to this section, fees or court costs may not be assessed against the complainant.

Section 14. Independent lawsuit not precluded — exhaustion of administrative remedies. Nothing in [sections 1 through 18] may be construed as infringing on a person's right to file an independent lawsuit to seek relief as a private party from an alleged violation of [sections 1 through 18]. However, if a person files a complaint with the department as provided in [section 10], the person must have exhausted the administrative remedies available under [section 11] before having standing to initiate an independent lawsuit.

Section 15. Jurisdiction — venue — standing — respondent — time limit — expedited hearing. In any lawsuit initiated pursuant to [sections 1 through 18]:

(1) the lawsuit must be brought in the district court in the county in which the claimant's employer maintains a place of business;

(2) the lawsuit may be initiated only by a person claiming a right or benefit under [sections 1 through 18] or by the state attorney general as provided in [section 13];

(3) only an employer may be a necessary party respondent;

(4) the lawsuit must be commenced within 3 years of when the claimant can reasonably be expected to have discovered the facts constituting a violation of the claimant's rights or benefits pursuant to [sections 1 through 18]; and

(5) the court shall order a speedy hearing and shall advance the case on the court's calendar.

Section 16. Court remedies. (1) In a lawsuit initiated pursuant to [sections 1 through 18], the court may provide one or more of the following remedies:

(a) require the employer to comply with the provisions of [sections 1 through 18];

(b) require the employer to compensate the complainant for losses suffered by the complainant because of the employer's violation; or

(c) if the court finds that the employer's violation was done willfully, as defined in 1-1-204, require the employer to pay compensation under subsection (1)(b) as liquidated damages.

(2) If the complainant is the prevailing party, the court may award reasonable attorney fees to the complainant.

(3) The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of a person under [sections 1 through 18].

Section 17. Special revenue account for payment to claimants. (1) There is an account in the state special revenue fund to the credit of the department of justice for the payment of compensation awarded by a court pursuant to [section 16].

(2) In a lawsuit by the state attorney general under [section 13], if paid compensation or liquidated damages are awarded, the money awarded must be deposited in the state special revenue account and be paid from the account directly to the complainant on order of the state attorney general.

(3) If payment cannot be made to a complainant within 3 years, the payment must be forwarded to the Montana department of revenue and classified as unclaimed property subject to the provisions of Title 70, chapter 9, part 8.

Section 18. Rulemaking authority. The department and the department of justice may adopt rules to implement the provisions of [sections 1 through 18].

Section 19. Section 2-16-112, MCA, is amended to read:

“2-16-112. Absence from the state. ~~No~~ *Except as provided in [section 8],* an officer mentioned in 2-16-111(1) ~~and no~~ or an officer appointed by the governor and confirmed by the senate ~~must~~ *may not* be absent ~~himself~~ from the state for more than 60 consecutive days unless ~~upon~~ *on* business of the state or with the consent of the legislature.”

Section 20. Section 2-16-501, MCA, is amended to read:

“2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;
- (3) resignation of the incumbent;
- (4) removal of the incumbent from office;
- (5) the incumbent’s ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent’s office are required to be discharged;
- (6) *except as provided in [section 8],* absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;
- (7) the incumbent’s ceasing to discharge the duty of the incumbent’s office for the period of 3 consecutive months, except when prevented by sickness, ~~or~~ when absent from the state by permission of the legislature, *or as provided in [section 8];*
- (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent’s official duties;
- (9) the incumbent’s refusal or neglect to file the incumbent’s official oath or bond within the time prescribed;
- (10) the decision of a competent tribunal declaring void the incumbent’s election or appointment.”

Section 21. Section 7-4-2208, MCA, is amended to read:

“7-4-2208. Absence of county officers from state. (1) ~~Except as provided in~~ *Subject to subsection (2) and except as provided in [section 8],* if a county officer ~~must in no case~~ is absent ~~himself~~ from the state for a period of more than 60 days ~~and~~ or for ~~no~~ a period longer than 15 days without the consent of the board of county commissioners, ~~and if he does so absent himself, he the officer forfeits his the office.~~

(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.”

Section 22. Section 10-1-604, MCA, is amended to read:

~~“10-1-604. Leave of absence of Paid military leave for public employees attending training camp or similar training program. (1) A state, city, town, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months shall must be given leave of absence with pay for a period of time not to exceed accruing at a rate of 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States performing military service.~~

(2) ~~This~~ Military leave may not be charged against the employee's annual vacation time.

(3) ~~Unused military leave must be carried over to the next calendar year, but may not exceed a total of 30 days in any calendar year.”~~

Section 23. Section 10-1-615, MCA, is amended to read:

“10-1-615. Misdemeanor violations. A person who violates ~~10-1-603, 10-1-613; or 10-1-614~~ is guilty of a misdemeanor.”

Section 24. Section 19-2-707, MCA, is amended to read:

“19-2-707. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994. *Contributions, benefits, and service credit for state active duty are governed by the Montana Military Service Employment Rights Act provided in [sections 1 through 18].”*

Section 25. 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 account of a covered employer 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; or

(e) if the base period employer is ordered to ~~state or federal active duty in the national guard or reserves~~ *military service, as defined in [section 3].”*

Section 26. 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 if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from the illness or injury when recovery is certified by a licensed and practicing physician, 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) 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; or

(c) employment because of being ~~called~~ *ordered to active military duty to serve in the United States armed forces service, as defined in [section 3]*, 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 active military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(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 27. Repealer. Sections 10-1-603, 10-2-211, 10-2-212, 10-2-213, 10-2-214, 10-2-221, 10-2-222, 10-2-223, 10-2-224, 10-2-225, 10-2-226, 10-2-227, and 10-2-228, MCA, are repealed.

Section 28. Instructions to code commissioner. Section 10-1-604 is intended to be renumbered and codified as an integral part of [sections 1 through 18], and the provisions of [sections 1 through 18] apply to section 10-1-604.

Section 29. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 18].

Section 30. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 382

[SB 119]

AN ACT REVISING CHILD PROTECTIVE SERVICES AND ADOPTION STATUTES IN COMPLIANCE WITH FEDERAL REGULATIONS AND AN ATTORNEY GENERAL'S OPINION; CLARIFYING WHO MAY BE

APPOINTED AS A GUARDIAN AD LITEM; AUTHORIZING A FOSTER CARE REVIEW COMMITTEE OR A CITIZEN REVIEW BOARD TO CONDUCT A PERMANENCY HEARING SUBJECT TO APPROVAL BY THE COURT AND ABSENT OBJECTION BY A PARTY TO THE PROCEEDING; AMENDING SECTIONS 41-3-112, 41-3-115, 41-3-201, 41-3-202, 41-3-438, 41-3-443, 41-3-445, 41-3-1010, AND 42-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 41-3-112, MCA, is amended to read:

“41-3-112. Guardian ad litem. (1) In every judicial proceeding, the court shall appoint a *guardian ad litem* for any child alleged to be abused or neglected ~~a guardian ad litem~~. The department or any *member* of its staff *who has a direct conflict of interest* may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) *The guardian ad litem must have received appropriate training that is specifically related to serving as a child’s court-appointed representative.*

~~(2)~~(3) The guardian ad litem is charged with the representation of the child’s best interests and shall perform the following general duties:

(a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child’s siblings and parents or custodians;

(d) to make written reports to the court concerning the child’s welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child’s welfare;

(f) to perform other duties as directed by the court; and

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child’s rights.

~~(3)~~(4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem’s opinion as to the best interests of the child.

~~(4)~~(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment.”

Section 2. Section 41-3-115, MCA, is amended to read:

“41-3-115. Foster care review committee — foster care reviews — permanency hearings. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review committee. *The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.*

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than ~~five~~ *three* or more than seven members. *To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.*

(b) The members must include:

~~(a)(i) a~~ *one* representative of the department *who may not be responsible for the placement of the child or have any other direct conflict of interest;*

~~(b) a representative of the youth court;~~

~~(c)(ii) someone~~ *a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and*

~~(d) a representative of a local school district;~~

~~(e)(iii) if the child whose care is under review is an Indian child, someone a person, preferably an Indian person, who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that review; and~~

~~(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.~~

(c) *Members may also include but are not limited to:*

(i) a representative of the youth court;

(ii) a representative of a local school district;

(iii) a public health nurse;

(iv) an at-large community member with knowledge of child protective services.

~~(2)(3) (a) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a the time limit established by the department. The time limit must comply with under the Adoption and Safe Families Act of 1997, as enacted 42 U.S.C. 675(5).~~

(b) The committee shall hear the case of each child in foster care to review issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:

(i) the safety, history, and specific needs of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether appropriate services have been available to the child and family on a timely basis; and

(iv) the results of intervention.(c) *The committee may hear the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.*

~~(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department with a written~~

~~report of its findings and recommendations for further action by the youth court or the department.~~

~~(4) The department shall adopt rules necessary to carry out the purposes of this section. The rules must provide for policies and procedures consistent with the provisions regarding notice, written findings and recommendations, conflict of interest, recordkeeping, sibling reviews, disclosure and immunity under 41-3-1010, and the deliberation provisions of 41-3-1012.~~

(4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the following:

(i) the parents of the child or their attorneys;

(ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate parents;

(iii) the child who is the subject of the review if the child is 12 years of age or older;

(iv) the child's attorney, if any;

(v) the guardian ad litem;

(vi) the court-appointed attorney or special advocate of the child; and

(vii) the child's Indian tribe if the child is an Indian.

(b) When applicable, notice of each review may be sent to other interested persons who are authorized by the committee to receive notice.

(c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

(d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings must be provided.

(e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to the attorney who initiated the child abuse or neglect proceedings.

(5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and recommendations made by the committee must be specific to each child.

(6) After reviewing each case, the committee shall prepare written findings and recommendations with respect to:

(a) the continuing need for the placement and the appropriateness and safety of the placement;

(b) compliance with the case plan;

(c) the progress that has been made toward alleviating the need for placement;

(d) a likely date by which the child may be returned home or by which a permanent placement may be finalized.

(7) Following the permanency hearing, the committee shall send copies of its minutes and written findings and recommendations to the court and to the parties. If a party objects to the findings and recommendations, the party may within 10 days serve written objections upon the other party and file them with the court. A request for a hearing before the court upon the objections may be made by a party by motion. The court, after hearing the objections or upon its own motion and without objection, may adopt the findings and recommendations and shall issue an appropriate order.

~~(5)~~(8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

~~(6)~~(9) The committee is subject to the call of the ~~youth~~ *youth district* court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the ~~youth~~ *youth district* court."

Section 3. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services ~~or its local affiliate~~.

(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) Christian Science practitioners and 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;

(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) 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.

(4) (a) Except as provided in subsection (4)(b) or (4)(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.

(5) 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 4. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours ~~develop~~ *result in the development of* independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If ~~a child~~ *an interview of the child* is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department ~~through its local office.~~

Section 5. Section 41-3-438, MCA, is amended to read:

“41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency ~~plan~~ hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 6. Section 41-3-443, MCA, is amended to read:

"41-3-443. Treatment plan — contents — changes. (1) The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

(c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in temporary medical or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency ~~plan~~ hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights."

Section 7. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency ~~plan~~ hearing must be held by the court *or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:*

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); ~~and or~~

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court *or the court-approved entity holding the permanency hearing* shall conduct a hearing and ~~make the court shall issue a finding as to~~ whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency ~~plan~~ hearing is not required if the proceeding has been dismissed, the child was not removed from the home, ~~or~~ the child has been returned to the child's parent or guardian, *or the child has been legally adopted or appointed a legal guardian.*

(c) The permanency ~~plan~~ hearing may be combined with a hearing that is required in other sections of this part *or with a review held pursuant to 41-3-115 or 41-3-1010* if held within the *applicable* time limits ~~of that section~~. If a permanency ~~plan~~ hearing is combined with another hearing *or a review*, the requirements of the court related to the disposition of the other hearing *or review* must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency ~~plan~~ hearing, the department ~~and the guardian ad litem~~ shall ~~each~~ submit a report regarding the child to the ~~court~~ *entity that will be conducting the hearing* for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency ~~plan~~ hearing, *the guardian ad litem or an attorney or advocate for a parent or guardian* may submit an informational report to the ~~court~~ *entity that will be conducting the hearing* for review.

(4) ~~(a) The court's order must be issued within a reasonable time 20 days after the permanency plan hearing if the hearing was conducted by the court. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.~~

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(5) *The court shall approve a specific permanency plan for the child and make written findings on:*

(a) whether the permanency plan is in the best interests of the child;

(b) *whether the department has made reasonable efforts to finalize the plan; and*

(c) *other necessary steps that the department is required to take to effectuate the terms of the plan.*

~~(5)~~(6) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection ~~(6)~~ (7) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are 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.

~~(6)~~(7) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

~~(7)~~(8) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 8. Section 41-3-1010, MCA, is amended to read:

“41-3-1010. Review — scope — procedures — immunity. (1) (a) The board shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

- (i) the safety of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether caseworkers have diligently provided services;
- (iv) whether appropriate services have been available to the child and family on a timely basis; and
- (v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child’s home and for whom the department retains legal custody.

(2) The review must ~~take place at times set by the board. The time limit must comply with~~ *be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).*

(3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child’s attorney, the guardian ad litem, the court-appointed attorney or special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the *Indian* child’s tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for the placement and the appropriateness and safety of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or ~~placed for adoption~~ *by which a permanent placement will be finalized;*

(f) other problems, solutions, or alternatives that the board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.

(8) The board may hold joint or separate reviews for groups of siblings, *but the court shall issue specific findings for each child.*

(9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, childrens' attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.

(11) The board may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445."

Section 9. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records — nonidentifying and identifying information — consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent;

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122; ~~and~~

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe; *and*

(d) identifying information to authorized personnel during a federal child and family services review.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 383

[SB 121]

AN ACT REMOVING THE RESTRICTION ON LIABILITY OF RESIDENTS OF MONTANA STATE HOSPITAL AND CERTAIN OTHER STATE INSTITUTIONS TO PAY FOR CARE PROVIDED TO THE RESIDENTS UNDER ANY PROVISION OF A CRIMINAL STATUTE; AMENDING SECTION 53-1-409, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-1-409, MCA, is amended to read:

“53-1-409. Limitations on liability of resident or financially responsible person for cost of care. (1) The resident or financially responsible person is liable only for the cost of care that the department has determined that the person is able to pay and for which the department has billed the resident or financially responsible person. If the amount payable is retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person shall pay only the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of a long-term resident may not be required to pay for the resident’s cost of care in an amount exceeding the cost of caring for a normal child at home as determined and updated annually by the department based upon the annual cost of raising a child, as estimated by the United States department of agriculture.

(3) The natural or adoptive parents of a long-term resident may not be required to pay for the resident’s cost of care for periods after the resident attains 18 years of age.

~~(4) (a) A resident or financially responsible person is not financially liable for care provided to a resident under any provision of a criminal statute.~~

~~(b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical dependency treatment center.~~

~~(5)~~(4) This section may not be construed to reduce the liability of a third party for a resident’s full cost of care as provided in this part.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 384

[SB 123]

AN ACT REVISING REQUIREMENTS GOVERNING SPECIAL FUEL PERMITHOLDERS AND SPECIAL FUEL USERS; REQUIRING THAT SPECIAL FUEL PERMITHOLDERS USE FUEL ON WHICH STATE TAX HAS BEEN PAID; REQUIRING THAT MATERIAL USED FOR CONSTRUCTION, RECONSTRUCTION, OR IMPROVEMENT IN CONNECTION WITH WORK PERFORMED UNDER A PUBLIC CONTRACT BE PRODUCED USING SPECIAL FUEL ON WHICH STATE FUEL TAX HAS BEEN PAID; EXEMPTING SPECIAL FUEL PERMITHOLDERS FROM CERTAIN RECORDKEEPING REQUIREMENTS; INCREASING THE CIVIL

PENALTIES FOR USING DYED SPECIAL FUEL ON THE PUBLIC ROADS AND HIGHWAYS; ELIMINATING THE MISDEMEANOR PENALTY FOR USING DYED FUEL; AND AMENDING SECTIONS 15-70-302, 15-70-321, 15-70-323, 15-70-325, 15-70-330, 15-70-356, AND 15-70-372, MCA.

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

Section 1. Section 15-70-302, MCA, is amended to read:

“15-70-302. Special fuel user’s permits required — exceptions. (1) (a) A special fuel user shall obtain a special fuel user’s permit annually from the department; prior to the use of special fuel:

~~(i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight used in an interstate operation;~~

(ii) by a special fuel user awarded a contract *or subcontract* in accordance with 15-70-321; or

~~(iii)~~ (ii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user’s courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, ~~state house personnel, motor carrier services enforcement officers and gross vehicle weight patrol crews~~ *motor carrier services patrol officers*. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user’s permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement.

(4) A special fuel user who obtains a permit under subsection (1) may use only fuel on which state fuel tax has been paid.”

Section 2. Section 15-70-321, MCA, is amended to read:

“15-70-321. (Temporary) Tax on special fuel and volatile liquids. (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

(3) *Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.*

15-70-321. (Effective on occurrence of contingency) Tax on special fuel and volatile liquids. (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions;

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state; and

(d) for each gallon of biodiesel delivered into the fuel supply tank of a highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) (a) The tax imposed in subsections (1)(a) through (1)(c) is 27 3/4 cents per gallon.

(b) The tax imposed in subsection (1)(d) is 85% of the amount provided for in subsection (2)(a).

(3) *Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid. (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)*

15-70-321. (Effective July 1 of fourth year following date of occurrence of contingency) Tax on special fuel and volatile liquids. (1) The department shall, under the provisions of rules issued by it, collect or cause

to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

(3) *Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.*"

Section 3. Section 15-70-323, MCA, is amended to read:

"15-70-323. Special fuel user's records. (1) ~~Every~~ *Except as provided in subsection (3), every* special fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep records, receipts, and invoices and other pertinent papers that the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) The records, receipts, invoices, and other pertinent papers must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

(3) *A special fuel user who is required to obtain a permit under 15-70-302 is exempt from the provisions of this section if the user uses fuel on which state fuel tax has been paid and if the user does not request a motor fuel tax refund.*"

Section 4. Section 15-70-325, MCA, is amended to read:

"15-70-325. Returns. (1) For the purpose of determining the amount of liability for special fuel tax, each special fuel user shall file with the department, on forms prescribed by the department, a quarterly tax return.

(2) ~~Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that the user's annual tax liability is or will be \$200 or less.~~

(3) ~~The user shall make an annual report and return to the department on forms prescribed by the department, on or before January 31 of each year. If the department determines that a user filing annual returns is delinquent in making reports and payments, it shall require the person to file quarterly returns. A return, annual or quarterly, must contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of perjury. The declarations have the same~~

force and effect as a verification. The return must show the information that the department may reasonably require for the proper administration and enforcement of this part.

~~(4)~~(3) The special fuel user shall file the return on or before the last day of the next calendar month following the period to which it relates; ~~provided, however, that.~~ *However*, for good cause, the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed 30 days.”

Section 5. Section 15-70-330, MCA, is amended to read:

“15-70-330. Special fuel penalties. (1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public roads and highways of this state unless ~~the fuel is subject to taxation under 15-70-321(1)(b) or~~ the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection is subject to the civil penalty imposed under ~~15-70-372 for the first offense 15-70-372(2). A subsequent offense is a misdemeanor punishable as provided in 15-70-336.~~ Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

(4) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose.”

Section 6. Section 15-70-356, MCA, is amended to read:

“15-70-356. Refund or credit authorized. (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used *if the person has records, as provided in 15-70-323, to prove nontaxable use.* The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled

to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund."

Section 7. Section 15-70-372, MCA, is amended to read:

"15-70-372. Civil penalty penalties. ~~The~~ *Except as provided in subsection (2), the department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.*

(2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation of the provisions of 15-70-330(3)."

Approved April 25, 2005

CHAPTER NO. 385

[SB 131]

AN ACT PROHIBITING THE IMPORTATION, SALE, OFFERING FOR SALE, AND DISPENSING OF GASOLINE CONTAINING METHYL TERTIARY BUTYL ETHER IN AMOUNTS THAT EXCEED ALLOWABLE TRACE LEVELS; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE

BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AUTHORIZING ADMINISTRATIVE PENALTIES AND INJUNCTIONS; AMENDING SECTIONS 82-15-102, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 82-15-102, MCA, is amended to read:

“82-15-102. Enforcement of part — rules. (1) ~~This~~ *Except as provided in subsection (2), this part shall* must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) *Section 82-15-110(8) must be enforced by the department of environmental quality.*

(3) *The board of environmental review shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:*

(a) *a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The board shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).*

(b) *reasonable sampling and reporting requirements; and*

(c) *requirements that the board determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether.”*

Section 2. Section 82-15-104, MCA, is amended to read:

“82-15-104. Department ~~Department~~ authorized to employ laboratory for testing. ~~The department~~ *and, when testing for methyl tertiary butyl ether, the department of environmental quality may employ a laboratory having that has* sufficient facilities to make tests of petroleum products as required and ~~may~~ *pay* reasonable compensation for the analyses and tests made by ~~at~~ *the laboratory.”*

Section 3. Section 82-15-106, MCA, is amended to read:

“82-15-106. Refusing, suspending, and revoking licenses — hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after *a hearing* ~~noticed~~ *noticed for which notice was provided* for not less than 10 days. Violation of any provision of this part, *except 82-15-110(8),* or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on ~~those terms which~~ *those terms which that the department considers just and proper appropriate.”*

Section 4. Section 82-15-110, MCA, is amended to read:

“82-15-110. Unlawful acts. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the ~~same~~ *meter or device* has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department's seal without written consent from the department;

(3) make ~~hose~~ delivery from petroleum vehicle tanks *through a hose* unless the tanks have been calibrated by the department under 82-15-108;

(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor, the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device ~~which~~ *that* has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the commodities in all respects meet the tests and standards prescribed;

(7) sell; ~~or offer;~~ or expose for sale any petroleum product ~~which~~ *that* is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended; *or*

(8) *import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted pursuant to 82-15-102(3)(a).*"

Section 5. Section 82-15-111, MCA, is amended to read:

"82-15-111. Penalty for violations. A person who *purposely, knowingly, or negligently* violates any of the provisions of this part, *except 82-15-110(8)*, or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment."

Section 6. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether — notice requirements — hearing — penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board of environmental review. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation has occurred, it shall either affirm or modify the department of environmental quality's order. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board of environmental review finds no violation has occurred, it shall rescind the department of environmental quality's order.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [section 6].

Section 8. Effective date. [This act] is effective January 1, 2006.

Approved April 25, 2005

CHAPTER NO. 386

[SB 137]

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF TATTOOING AND BODY-PIERCING ESTABLISHMENTS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND LOCAL BOARDS OF HEALTH; GRANTING RULEMAKING AUTHORITY REGARDING STANDARDS FOR SANITATION AND SAFETY, LICENSING, ENFORCEMENT PROCEDURES, AND FEES; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF TATTOOING AND BODY-PIERCING LAWS; PROVIDING FOR THE DENIAL AND CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY HEALTH AUTHORITIES; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR THE DEPARTMENT TO USE IN ADMINISTERING THE LAWS; AMENDING SECTIONS 45-5-623, 50-1-202, 50-2-116, AND 50-2-130, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Purpose. The regulation of tattooing and body-piercing establishments is required to protect the public health and safety.

Section 2. Definitions. As used in [sections 1 through 15], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature.

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

(3) "Establishment" means either a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.

(4) "Local board of health" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2.

(5) "Local health officer" has the meaning provided in 50-2-101.

(6) "Multiple-type establishment" means an operation encompassing both body piercing and tattooing on the same premises and under the same management.

(7) "Person" means an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of body piercing or tattooing.

(8) "Regulatory authority" means the department of public health and human services, the local board of health, the local health officer, or the local sanitarian.

(9) (a) "Tattooing" means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. The term includes imparting permanent makeup on the skin such as permanent lip coloring and permanent eyeliner.

(b) The term does not include:

(i) the practice of electrology as defined in 37-31-101; or

(ii) the use by a physician or medical professional who is licensed to practice in the state of Montana of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes.

Section 3. Rulemaking authority. The department shall adopt and enforce minimum safety and sanitation requirements for tattooing and body piercing, including rules to:

(1) set standards to ensure sanitation and safety in establishments to protect the public health and safety;

(2) license establishments;

(3) provide procedures for enforcement of the laws and rules relating to establishments, including implementing plans of correction;

(4) impose fees for licensure, inspection, enforcement, training, and administration.

Section 4. Licensure and regulation by local boards of health. (1) A local board of health may implement its own licensure and regulatory program for tattooing and body-piercing establishments independent of that of the department. A local board of health's licensure and regulatory program must be operated in lieu of the department's licensure and regulatory program.

(2) Subject to the restrictions in 50-2-130, a local board of health that operates its own licensure and regulatory program pursuant to subsection (1) may adopt necessary regulations that are not less stringent than department rules adopted under [section 3]. The rules may include:

(a) standards to ensure sanitation and safety in establishments to protect public health and safety;

(b) licensure of establishments;

(c) procedures for enforcement of the laws and rules relating to establishments, including the implementation of plans of correction; and

(d) fees that reflect and may not exceed the actual costs incurred for licensure, inspection, enforcement, training, and administration.

(3) The local board of health shall report annually to the department on the number of establishments that it licenses and regulates.

Section 5. Injunctions. A regulatory authority may bring an action for an injunction against any continued violation of [sections 1 through 15] or any rule adopted under [section 3 or 4].

Section 6. County attorney to prosecute violations. When a regulatory authority furnishes evidence to the county attorney of a county in this state where the violating establishment operates, the county attorney shall prosecute any person violating [sections 1 through 15] or any rule adopted under [section 3 or 4].

Section 7. Penalties — misdemeanor. A person who purposefully or knowingly violates any provision of [sections 1 through 15] or rules adopted under [section 3 or 4] is guilty of a misdemeanor. Upon conviction, the person shall be fined:

(1) an amount of not less than \$50 or more than \$100 for the first offense;

(2) an amount of not less than \$75 or more than \$200 for the second offense; and

(3) an amount of not less than \$200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

Section 8. Civil penalties — injunctions not barred. (1) An establishment that violates [sections 1 through 15] or rules adopted under [section 3 or 4] is subject to a civil penalty not to exceed \$500 for each violation.

(2) An action to impose civil penalties under this section does not bar actions for injunctions to enforce compliance with [sections 1 through 15] or to enforce compliance with a rule adopted under [section 3 or 4].

Section 9. Costs and expenses — recovery by regulatory authority. In a civil action initiated by the regulatory authority under [section 5 or 8], the court may, by petition of the regulatory authority, order an establishment that is found to be in willful violation of [sections 1 through 15] or a rule adopted under [section 3 or 4] to pay the costs of investigations and any other expenses incurred. These costs are limited to the direct costs of investigations and other expenses.

Section 10. License required — fees — application. (1) A person operating an establishment shall procure an annual license from the appropriate regulatory authority having jurisdiction. For each annual license, the regulatory authority shall collect a fee established by rule pursuant to [section 3 or 4].

(2) A separate license is required for each establishment operating on different premises.

(3) A person operating a multiple-type establishment shall procure separate licenses for body piercing and tattooing businesses.

(4) An application for a license must be made to the department on forms containing the information required by the department.

(5) Licenses are not transferable.

Section 11. Late fee — allocation of licensure and late fees. (1) A person operating an establishment who fails to renew a license issued by the department by the expiration date and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual fee required by [section 10]. Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(2) The department shall deposit the fees collected under [section 10] and subsection (1) of this section in the state special revenue account provided for in [section 15].

Section 12. Denial or cancellation of license by regulatory authority — multiple-type establishments. (1) The regulatory authority may deny or cancel a license it issues if it finds, after proper investigation, that the applicant or licensee is not in compliance with [sections 1 through 15] or a rule adopted under [section 3 or 4] and the applicant or licensee has failed or refused to remedy or correct the noncompliance or violation.

(2) When a multiple-type establishment is licensed, the denial or cancellation may affect both tattooing and body-piercing operations or only one of the operations, as determined by the regulatory authority.

Section 13. Notice and hearing required for license denial or cancellation. (1) A license may not be denied or canceled by the regulatory authority without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation and an opportunity for a hearing before the regulatory authority to show cause, if any, why the license should not be denied or canceled.

(2) The applicant or licensee shall make a written request to the department for a hearing within 10 days after notice of the grounds for denial or cancellation has been received.

(3) The hearing conducted by the department must be held in accordance with the contested case procedures of the Montana Administrative Procedure Act.

Section 14. Health officers to make investigations and inspections — free access. (1) State and local health officers or their designees shall conduct investigations and inspections of establishments.

(2) State and local health officers or their designees must be provided access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under subsection (1).

(3) If a local board of health inspection and regulatory program is being operated in lieu of a department program, the local board of health and not the department has the duty and authority provided in this section.

Section 15. State special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of [sections 1 through 15] and the rules adopted under [section 3].

Section 16. Section 45-5-623, MCA, is amended to read:

“45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if the person knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age;

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; or

(e) tattoos or provides a body piercing on a child under the age of majority without the explicit in-person consent of the child’s parent or guardian. For purposes of this subsection, “tattoo” ~~has~~ and “body piercing” have the meaning provided in ~~50-2-116~~ [section 2]. Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.

(2) A person convicted of the offense of unlawful transactions with children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler’s comments for contingent termination of certain text.)”

Section 17. Section 50-1-202, MCA, is amended to read:

“50-1-202. General powers and duties. The department:

(1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) shall make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, shall administer any federal health program for which responsibilities are delegated to states;

(4) shall inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) shall conduct health education programs;

(10) shall provide consultation to school and local community health nurses in the performance of their duties;

(11) shall consult with the superintendent of public instruction on health measures for schools;

(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

- (a) diagnosis;
- (b) medical, surgical, and corrective treatment;
- (c) aftercare and related services; and
- (d) eligibility;

(13) shall provide consultation to local boards of health;

(14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) shall accept and expend federal funds available for public health services;

(16) must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) shall adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) shall adopt and enforce rules regarding the reporting and control of communicable diseases;

(19) shall adopt and enforce rules regarding the transportation of dead human bodies;

(20) shall adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems;

~~(21) shall adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease; and~~

~~(22)~~(21) shall enact or take measures to prevent and alleviate injury from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death."

Section 18. Section 50-2-116, MCA, is amended to read:

“50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) adopt and enforce isolation and quarantine measures to prevent the spread of communicable diseases;

(b) furnish treatment for persons who have communicable diseases;

(c) prohibit the use of places that are infected with communicable diseases;

(d) require and provide means for disinfecting places that are infected with communicable diseases;

(e) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(f) contract with another local board for all or a part of local health services;

(g) reimburse local health officers for necessary expenses incurred in official duties;

(h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(i) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.

(j) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; *and*

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; ~~and~~

~~(vi)(k) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors. subject to the provisions of 50-2-130 and [sections 1 through 15], adopt necessary regulations that are not less stringent than state standards for tattooing and body piercing establishments; and~~

~~(l)~~ adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7."

Section 19. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), (2)(j)(iii), ~~or~~ (2)(j)(v), *or* (2)(k) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(j)(iii), ~~or~~ (2)(j)(v), *or* (2)(k) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply

with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule.”

Section 20. Codification instruction. [Sections 1 through 15] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 15].

Section 21. Effective date. [This act] is effective January 1, 2006.

Approved April 25, 2005

CHAPTER NO. 387

[SB 138]

AN ACT REVISING LAWS RELATED TO THE FLATHEAD BASIN COMMISSION; INCREASING THE NUMBER OF COMMISSION MEMBERS; MAKING PERMANENT THE ATTACHMENT OF THE FLATHEAD BASIN COMMISSION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 2-15-3330, MCA; REPEALING SECTION 4, CHAPTER 537, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-15-3330, MCA, is amended to read:

“2-15-3330. ~~(Temporary)~~ Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of ~~21~~ 23 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor’s staff;

(b) one member ~~who is~~, *appointed by the director of the department of natural resources and conservation, or the director’s designee representing the northwestern land office of the department of natural resources and conservation;*

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of *the* interior, national park service regional director for the Rocky Mountain region;

(h) one member appointed by the Flathead County conservation district board of supervisors;

(i) one member appointed by the Lake County conservation district board of supervisors;

(j) ~~four~~ *five* ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of the interior, bureau of reclamation; *a representative of the Bonneville power administration*; and the holder of a license issued for the Flathead project under the Federal Power Act;

(k) ~~two~~ *three* ex officio members who are *the director of the department of natural resources and conservation*, the director of the department of environmental quality, and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the department of natural resources and conservation for administrative purposes only. (~~Amendment and renumbering terminate June 30, 2005—sec. 4, Ch. 537, L. 2003. On July 1, 2005, this section reverts to its previous MCA designation of 2-15-213.~~)

Section 2. Repealer. Section 4, Chapter 537, Laws of 2003, is repealed.

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

Approved April 25, 2005

CHAPTER NO. 388

[SB 164]

AN ACT DESIGNATING MAIN STREET IN BILLINGS AS THE RICHARD DEAN ROEBLING MEMORIAL HIGHWAY; AND DIRECTING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS RECOGNIZING THE DESIGNATION.

WHEREAS, statistics compiled by the Montana Department of Transportation indicate that in the last 2 years, nearly 40% of all fatal accidents involving motor vehicles were alcohol-related accidents; and

WHEREAS, the 97 fatalities that resulted from alcohol-related crashes in 2003 serve as a painful reminder of the need to promote highway safety; and

WHEREAS, in 1997, the 55th Legislature recognized the dangers that motor vehicles posed to individuals engaged in highway construction and maintenance work; and

WHEREAS, in an effort to mitigate the dangers, the 55th Legislature enacted a bill that doubled penalties for traffic violations in highway construction and work zones; and

WHEREAS, in 2003, to further protect highway workers, the 58th Legislature created the offense of reckless endangerment of a highway worker; and

WHEREAS, despite legislative efforts and a public information campaign initiated by the Department of Transportation to warn the driving public to drive slowly and carefully through highway construction and work zones, accidents have occurred in these areas; and

WHEREAS, in June 2004, 38-year-old father of two Richard Dean Roebing, a road engineer employed on a road reconstruction project on Main Street in Billings, was struck and killed by an intoxicated driver; and

WHEREAS, it is appropriate that Main Street in Billings bear the name of Mr. Roebing to commemorate Mr. Roebing's life and service to the community of Billings, to recognize the valuable contributions of highway construction workers in Yellowstone County and throughout the state, and to remind motorists of the dangers of drunk driving and the importance of driving carefully through highway construction and work zones.

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

Section 1. Richard Dean Roebing memorial highway. (1) The portion of U.S. highway 87 known as "Main Street" in Billings is established as the Richard Dean Roebing memorial highway for commemorative purposes only.

(2) The department shall provide appropriate markers to recognize the name of the highway but may not erect more than three markers along the highway.

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].

Approved April 25, 2005

CHAPTER NO. 389

[SB 183]

AN ACT CLARIFYING THE DUTIES OF REAL ESTATE BROKERS OR SALESPERSONS ACTING AS PROPERTY MANAGERS; REQUIRING COMPLIANCE WITH PROPERTY MANAGEMENT STATUTES AND RULES; REQUIRING DISCLOSURE NOTICE; PROVIDING FOR LICENSE REVOCATION OR SUSPENSION FOR FAILURE TO COMPLY WITH PROPERTY MANAGEMENT STATUTES, RULES, AND DISCLOSURE REQUIREMENTS; PROVIDING AN EXEMPTION FROM BEING LICENSED AS A PROPERTY MANAGER; AND AMENDING SECTIONS 37-51-313, 37-51-314, 37-51-321, AND 37-51-602, MCA.

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

Section 1. Section 37-51-313, MCA, is amended to read:

"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the

common law as applied to these relationships. The terms “buyer agent”, “dual agent” and “seller agent”, as used in this chapter, are defined in 37-51-102 and are not related to the term “agent” as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent;

(d) safeguard the seller’s confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller’s objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent’s possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent;

(d) safeguard the buyer’s confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer’s objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent’s possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

~~(8)~~(9) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

~~(9)~~(10) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

~~(10)~~(11) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 2. Section 37-51-314, MCA, is amended to read:

"37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) *A broker or salesperson, while managing properties for owners, shall disclose to all customers and clients the contractual relationship of the broker or salesperson.*

(9) *When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies*

with subsection (8) must be construed as a sufficient disclosure of the contractual relationship.

~~(8)~~(10) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

~~(9)~~(11) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.”

Section 3. Section 37-51-321, MCA, is amended to read:

“37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, ~~which~~ *if the* advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker’s own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term “realtor” by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker’s or salesperson’s possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person’s dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; ~~or~~

(t) conviction of a felony;

(u) *failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners; or*

(v) *failing to disclose to all customers and clients, including owners and tenants, the broker's or salesperson's contractual relationship while managing properties for owners.*

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons

who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1).”

Section 4. 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 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.*"

Approved April 25, 2005

CHAPTER NO. 390

[SB 196]

AN ACT ADOPTING THE "GUS BARBER ANTISECRECY ACT"; PROHIBITING A FINAL ORDER OR JUDGMENT OR WRITTEN FINAL SETTLEMENT AGREEMENT THAT CONCEALS A PUBLIC HAZARD; PROVIDING CERTAIN EXCEPTIONS; PROHIBITING AGREEMENTS OR CONTRACTS THAT CONCEAL INFORMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited. (1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means a device, instrument, or manufactured product, or a condition of a device, instrument, or manufactured product, that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

(a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;

(b) other information that is confidential under state or federal law; or

(c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section has no applicability to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Any materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 6, part 1, and the provisions of Title 2, chapter 6, part 1, apply to [section 1].

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

Section 4. Applicability. [This act] applies to causes of action filed after [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 391

[SB 197]

AN ACT REVISING PENSION BENEFITS FOR VOLUNTEER FIREFIGHTERS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; ALLOWING CERTAIN MEMBERS TO RETURN TO VOLUNTEER SERVICE WITHOUT LOSS OF BENEFITS; CLARIFYING THE CALCULATION OF BENEFITS AFTER 20 YEARS OF SERVICE; AMENDING SECTIONS 19-17-401 AND 19-17-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (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 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) Except as provided in subsection (5):

(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) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) *A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire department without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit.*

Section 2. 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 full pension benefit of a member ~~who has completed 20 years of service and is at least 55 years of age and who continues~~ *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 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2005

CHAPTER NO. 392

[SB 231]

AN ACT REVISING LAWS RELATED TO JUDGMENTS AND THE COLLECTION OF JUDGMENTS; PROVIDING THAT DISHONORED OR FRAUDULENT PAYMENTS OF PROPERTY TAXES ARE SUBJECT TO THE PENALTIES FOR OTHER DISHONORED OR FRAUDULENT PAYMENTS; CLARIFYING THAT A REGISTERED PROCESS SERVER MAY MAKE

SERVICE OF PROCESS IN ANY COUNTY IN THIS STATE; REVISING THE PROCEDURE FOR RETURNING A SUMMONS, PROCESS, OR ORDER; PROVIDING THAT INTEREST ON JUDGMENTS ALSO APPLIES TO THE COST OF OBTAINING OR ENFORCING A JUDGMENT; PROVIDING THAT SERVICE OF PROCESS MAY BE MAILED OUT OF STATE, AT THE DIRECTION OF A THIRD PARTY, IF THE THIRD PARTY PROCESSES GARNISHMENTS OR LEVIES FROM A LOCATION OUTSIDE THE STATE; PROVIDING THAT THE STATUTE OF LIMITATIONS FOR THE LIABILITY FOR ISSUING A DISHONORED PAYMENT IS 6 YEARS FROM THE DATE OF THE DEMAND FOR PAYMENT OF A SERVICE CHARGE; CLARIFYING THAT AN OBLIGATION IS TRANSFERABLE PROPERTY AND PROVIDING FOR THE DISCHARGE OF A TRANSFERRED OBLIGATION; AND AMENDING SECTIONS 15-16-403, 25-1-1101, 25-3-301, 25-9-205, 25-13-402, 27-1-717, AND 28-1-1001, MCA.

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

Section 1. Section 15-16-403, MCA, is amended to read:

“15-16-403. Lien on real property and improvements. Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year. *A person who issues a check, draft, converted check, electronic funds transfer, or order for the payment of real property taxes is subject to the liability provided in 27-1-717 if the instrument is dishonored or if the issuer stops payment with the intent to fraudulently defeat a possessory lien or defraud the payee.*”

Section 2. Section 25-1-1101, MCA, is amended to read:

“25-1-1101. Registered process server — levying officer. (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which ~~he~~ *the person* resides or ~~has his~~ *in which the person's* principal place of business is located. *A registered process server may make service of process in any county in this state.*

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of ~~his~~ employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.”

Section 3. Section 25-3-301, MCA, is amended to read:

“25-3-301. Time and manner of return. (1) ~~It shall be the duty of the~~ *The* sheriff or other person serving a summons or other process or order required by any of the provisions of ~~this code law~~, issued ~~out of~~ *for* any of the district courts of this state, ~~to shall~~ *shall* make due and legal return of ~~such the~~ *such the* service and file the ~~same return~~ with the clerk of the court in which ~~such the~~ *such the* action or proceeding is pending. *The return must be made within not more than 10 days after the making of such the service where if the same service was made in the county in which such the action or proceeding is pending and not more than within 15 20 days after the making of such the service when the same service was made*

outside of the county in which ~~such~~ *the* action or proceeding is pending. Any failure to make and file ~~such~~ *the* return ~~as required~~ may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose ~~his~~ a return of ~~such~~ process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, ~~prepaying~~ postage *prepaid*.

(3) *In compliance with the provisions of subsection (1) and in lieu of returning a summons, other process, or order to the clerk of court, the sheriff or levying officer may enclose the return of the summons, process, or order in an envelope, postage prepaid, and deposit it in the post office addressed to the officer, agent, or attorney who sent it.*

Section 4. Section 25-9-205, MCA, is amended to read:

“25-9-205. Amount of interest. (1) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state *and on the cost incurred to obtain or enforce a judgment* at the rate of 10% per ~~annum and no greater rate year.~~ ~~Such~~ *The interest must may* not be compounded ~~in any manner or form.~~

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.”

Section 5. Section 25-13-402, MCA, is amended to read:

“25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsection (6), execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

- (i) levying on a sufficient amount of property, if there is sufficient property;
- (ii) collecting or selling the things in action; and
- (iii) selling the other property and paying to the judgment creditor or the judgment creditor’s attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the third party or upon a department or person designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising employee of the third party or to a department or person designated by the third party. *Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state.* If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ is required to forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (7), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions.”

Section 6. 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 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."

Section 7. Section 28-1-1001, MCA, is amended to read:

"28-1-1001. Rights arising out of obligation transferable. A right arising out of an obligation is the property of the person to whom it is due and may be transferred as ~~such~~ *the property of that person. Unless otherwise provided by law, a transfer by written, oral, electronic, or other means creates a valid assignment upon the transfer.*"

Approved April 25, 2005

CHAPTER NO. 393

[SB 245]

AN ACT REVISING RESORT AREA DISTRICT BOARD ELECTION LAWS; PROVIDING A PROCESS FOR EXTENDING AN EXISTING RESORT AREA DISTRICT; PROVIDING FOR DIRECT APPOINTMENT OF A BOARD MEMBER IF NO CANDIDATE HAS FILED A NOMINATION PETITION AND REQUIRING SUBSEQUENT ELECTION OF THAT BOARD MEMBER; REQUIRING A SUBSEQUENT ELECTION OF A BOARD MEMBER APPOINTED TO FILL A VACANCY; AND AMENDING SECTIONS 7-6-1541, 7-6-1544, AND 7-6-1546, MCA.

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

Section 1. Section 7-6-1541, MCA, is amended to read:

“7-6-1541. General powers of resort area district. (1) A resort area district created under 7-6-1531 through 7-6-1550 may:

- (a) have perpetual succession;
- (b) sue and be sued in any court of competent jurisdiction;
- (c) acquire by any legal means real and personal property necessary to the full exercise of its powers; and
- (d) make contracts, employ labor, and do all acts necessary for the full exercise of its powers.

(2) (a) *The board for a resort area district that does not have perpetual succession may submit the question of extension of the term of the resort area district directly to the voters. If the electorate extends the term of the resort area district, the provisions of this part continue to apply.*

(b) *The board may not submit a question to the voters to extend the term of a resort area district until the expiration of at least half the existing term of the resort tax, as provided for in 7-6-1504. If a vote to extend the term fails, successive votes to extend the term may be taken no more than once each year.*

~~(2)~~(3) The board shall exercise the powers described in 7-6-1531 through 7-6-1550.”

Section 2. Section 7-6-1544, MCA, is amended to read:

“7-6-1544. Resort area district board — election — term. (1) The first election of the board must be held at the next regular, primary, or school election immediately succeeding the creation of the resort area district. Each succeeding election must be held every 2 years to coincide with the election for local government officials as provided in 13-1-104(2).

(2) A petition of nomination, signed by at least five electors from within the resort area district, may be filed with the election administrator in any county containing a portion of the resort area district. A nominating petition must be filed at least 135 days and not fewer than 75 days before the election.

(3) (a) *If the number of candidates filing a petition is insufficient to complete board membership, the existing board shall appoint as many members as are needed to complete the five-member board.*

(b) *An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of votes cast in the election, the*

appointee's term expires, and the board shall initiate the process described in this subsection (3).

(c) The term of a resort area district board member appointed and subsequently elected under the provisions of this subsection (3) is 4 years."

Section 3. Section 7-6-1546, MCA, is amended to read:

"7-6-1546. Resort area district board — vacancy. (1) If a vacancy on the board occurs by death, resignation, or removal from the resort area district, the remaining directors shall appoint a director to fill the vacancy. The term of the appointment coincides with the term that became vacant.

(2) *An appointee to the board must be elected by a majority of those voting at the election conducted under 13-1-104 immediately following the appointment. If an appointee does not receive a majority of the votes cast in the election, the appointee's term expires and the board shall initiate the process to fill the vacancy as provided in subsection (1).*"

Approved April 25, 2005

CHAPTER NO. 394

[SB 248]

AN ACT REVISING THE PENALTY FOR DRIVING WITHOUT MANDATORY MOTOR VEHICLE LIABILITY INSURANCE; PROVIDING THAT FOR A SECOND OR SUBSEQUENT OFFENSE, UPON PRESENTING PROOF OF INSURANCE, A DRIVER MUST BE ISSUED A RESTRICTED REGISTRATION RECEIPT THAT ALLOWS THE MOTOR VEHICLE INVOLVED IN THE OFFENSE TO BE OPERATED ONLY FOR EMPLOYMENT PURPOSES; AMENDING SECTION 61-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of \$350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates ~~for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction.~~ The receipt and plates may not be reinstated until ~~the expiration of that period and until~~ proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is

entitled to register the vehicle. *Upon proof of compliance with 61-6-301, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt and return the license plates to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes. Upon the expiration of the appropriate time period, the department shall issue a regular registration receipt to the owner of the vehicle. The department may establish fees for the restricted registration receipts issued pursuant to this subsection.*

(3) Upon a fourth ~~and~~ or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section.

(6) 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."

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 395

[SB 259]

AN ACT PROVIDING THAT TRANSFER OF PROPERTY TO NONFEDERAL PUBLIC OWNERSHIP REQUIRES AN INSPECTION TO DETERMINE IF NOXIOUS WEEDS ARE PRESENT; REQUIRING THE INSPECTION INFORMATION BE SUBMITTED TO THE PURCHASER OR GRANTEE; REQUIRING THE ENTITIES TO DEVELOP A WEED MANAGEMENT AGREEMENT; REQUIRING THE WEED MANAGEMENT AGREEMENT TO BE PART OF THE PURCHASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Public purchase or receipt of property — weed management plan. (1) Except as provided in subsection (4), prior to the purchase of real property with public funds or the receipt of real property by a nonfederal public entity, the purchaser or grantee shall have the property inspected by the county weed management district. The county weed management district's report regarding the property must be filed with the purchaser or grantee. The costs associated with the inspection must be borne by the seller or grantor.

(2) If the report indicates that there are noxious weeds present on the property, the purchaser, seller, grantee, or grantor shall develop a noxious weed

management agreement to ensure compliance with the district noxious weed management program. However, unless the parties agree otherwise, a seller or grantor is obligated by a noxious weed agreement only until the property sale or transfer is completed. Except as provided in subsection (4), the weed management agreement must be incorporated into the purchase agreement.

(3) The provisions of this section do not apply to:

(a) the state acquisition or disposition of a public right-of-way pursuant to Title 60, chapter 4; or

(b) lands sold or purchased through land banking pursuant to 77-2-361 through 77-2-367.

(4) If a transfer of property will occur during the winter months when the ability to identify noxious weeds is significantly reduced by snow cover, the purchaser, seller, grantee, or grantor may request a 6-month extension for completion of the inspection and any noxious weed management agreement that may be required. If, upon inspection, it is determined that a noxious weed management agreement is necessary, unless otherwise agreed by the parties, the purchaser or grantee is responsible for implementing the provisions of that agreement.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 396

[SB 275]

AN ACT RELATING TO THE VOLUNTARY GENETICS PROGRAM; CHANGING THE NAME OF THE PROGRAM TO THE GENETICS PROGRAM; TEMPORARILY INCREASING THE GENETICS PROGRAM FEE; CREATING A STATE SPECIAL REVENUE ACCOUNT FOR DEPOSIT OF THE FEE; AND AMENDING SECTIONS 33-2-712 AND 50-19-211, MCA.

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

Section 1. Section 33-2-712, MCA, is amended to read:

“33-2-712. Genetics program fee. (1) Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay ~~70 cents~~ *the fee provided for in subsection (2)* to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in ~~the general~~ *an account in the state special revenue fund provided for in [section 3].* ~~The purpose of the fee is may be used only to fund the voluntary statewide genetics program established in 50-19-211.~~

(2) (a) *From [the effective date of this act] through June 30, 2007, the fee is \$1.*

(b) *Beginning July 1, 2007, the fee is 70 cents.”*

Section 2. Section 50-19-211, MCA, is amended to read:

“50-19-211. ~~Voluntary~~ Statewide genetics program established. (1) A ~~combined, comprehensive-voluntary~~ statewide genetics program is established in the department to offer testing, counseling, and education to parents and prospective parents. The program includes, but is not limited to, the following services:

~~(1)(a)~~ (a) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;

~~(2)(b)~~ (b) comprehensive *clinical and self-supporting laboratory* genetic services, *including but not limited to cytogenetics, DNA, and special chemistry*, to all areas of the state and all segments of the population;

~~(3)(c)~~ (c) development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and

~~(4)(d)~~ (d) development and expansion of educational programs for physicians, allied health professionals, and the public with respect to:

~~(a)(i)~~ (i) the nature of genetic processes;

~~(b)(ii)~~ (ii) the inheritance patterns of genetic conditions; and

~~(c)(iii)~~ (iii) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions and metabolic disorders.

(2) *When the department contracts for genetics services under this section, it shall preferably contract with a single entity that is able to provide the combined, comprehensive program. The department and the contractor shall administer the contract in the most cost-effective means practicable.”*

Section 3. State special revenue account. There is an account in the state special revenue fund to the credit of the department to be used solely for the purposes provided in 50-19-211.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 50, chapter 19, part 2, and the provisions of Title 50, chapter 19, part 2, apply to [section 3].

Approved April 25, 2005

CHAPTER NO. 397

[SB 277]

AN ACT ESTABLISHING A SPECIAL FUEL USER'S AGRICULTURAL PRODUCT TEMPORARY TRIP PERMIT FOR A PERSON OPERATING A SPECIAL FUEL-POWERED VEHICLE OVER 26,000 POUNDS GROSS VEHICLE WEIGHT OR REGISTERED GROSS VEHICLE WEIGHT IN THE MOVEMENT OF THAT PERSON'S AGRICULTURAL PRODUCTS UPON THE PUBLIC ROADS AND HIGHWAYS OF THIS STATE; PROVIDING TERMS AND FEES FOR AGRICULTURAL PRODUCT TEMPORARY TRIP PERMITS; AMENDING SECTIONS 15-70-311 AND 15-70-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-70-311, MCA, is amended to read:

“15-70-311. Special fuel user’s temporary trip permits — nonresident agricultural harvesting equipment special fuel permit —

special fuel user's agricultural product temporary trip permit. (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(3) *Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who is using the vehicle for the movement of that person's agricultural products, as defined in 80-11-101, and who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's agricultural product temporary trip permit. The permit is not valid for contract custom haulers. The permit is valid for a radius of 70 miles from a point specified on the permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule. A permit application may be submitted electronically, and the permit may be subsequently issued when the appropriate fee required in 15-70-312(3) is received by the permit issuer. Any costs associated with the electronic application process may be added to the total cost of the permit."*

Section 2. Section 15-70-312, MCA, is amended to read:

"15-70-312. Fees for temporary permits — duration of temporary permits. (1) Temporary special fuel permits *issued under 15-70-311(1)* cost \$30. The permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment costs \$30 per unit for the calendar year in which the fee is collected. The permit is not transferable. A unit is defined as:

- (a) one truck suitable for hauling commodities;
- (b) one harvesting machine; and
- (c) pickup trucks and any other accessory vehicles.

(3) *The cost of a special fuel user's agricultural product temporary trip permit for a person operating a vehicle in the movement of that person's agricultural products, as provided in 15-70-311(3), is:*

- (a) \$100 for a permit that is valid for 30 days from the date of issuance; or
- (b) \$300 for a permit that is valid for 3 months from the date of issuance.

(4) All fees collected must be remitted to the department or deposited directly in the state special revenue fund for the department.”

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 398

[SB 279]

AN ACT ALLOWING A MUNICIPALITY TO PROVIDE THAT A VIOLATION OF A CRIMINAL OFFENSE UNDER STATE LAW THAT IS PUNISHABLE ONLY BY A FINE IS A MUNICIPAL INFRACTION; AND AMENDING SECTION 7-1-4150, MCA.

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

Section 1. Section 7-1-4150, MCA, is amended to read:

“7-1-4150. Municipal infractions — civil offense. (1) A municipal infraction is a civil offense punishable by a civil penalty of not more than \$300 for each violation or if the infraction is a repeat offense, a civil penalty not to exceed \$500 for each repeat violation.

(2) A municipality may by ordinance provide that a violation of an ordinance is a municipal infraction.

(3) (a) A municipality may by ordinance ~~not~~ provide that a ~~violation of an ordinance is a municipal infraction if the violation is a criminal offense under state law that is punishable only by a fine is a municipal infraction.~~

(b) *Statutory surcharges must be imposed, as provided in [3-1-317(1)(a),] 3-1-318(1), and 46-18-236(6)(a), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.*

(c) *A person may not be proceeded against for the same act or omission to act under both a municipal infraction ordinance and the corresponding state law criminal offense on which the municipal infraction ordinance is based.*

(4) An officer who is authorized by a municipality to enforce a municipal code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service, by certified mail addressed to the defendant at the defendant’s last known mailing address, return receipt requested, or by publication, as provided in Rule 4D(5), M.R.Civ.P. A copy of the citation must be retained by the issuing officer and one copy must be sent to the clerk of the municipal or city court. The citation must serve as notification that a municipal infraction has been committed and must contain the following information:

- (a) the name and address of the defendant;
- (b) the name or description of the infraction attested to by the officer issuing the citation;
- (c) the location and time of the infraction;
- (d) the amount of civil penalty to be assessed or the alternate relief sought, or both;
- (e) the manner, location, and time in which the penalty may be paid;

- (f) the time and place of court appearance; and
- (g) the penalty for failure to appear in court.”

Section 2. Coordination instruction. If legislation is not passed by the 59th legislature extending the duration of 3-1-317, then the bracketed reference in 7-1-4150(3)(b) is void.

Approved April 20, 2005

CHAPTER NO. 399

[SB 288]

AN ACT SPECIFYING THE CONDITIONS UNDER WHICH THE LOANS TO STATE AGENCIES MAY BE MADE UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature has previously authorized various state agencies to borrow from the program authorized under the Municipal Finance Consolidation Act of 1983, Title 17, chapter 5, part 16, MCA, and commonly known as the INTERCAP program; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature desires to establish parameters for the future use of the INTERCAP program by state agencies to ensure that loans are properly authorized.

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

Section 1. Specific loan authorization. The legislature intends that individual state agencies may borrow from the program established in this part, as specifically authorized by the legislature under the following conditions:

(1) A loan for which the security is an enterprise or internal service fund source may be approved by a simple majority vote of the legislature.

(2) A loan for which the security is a general fund appropriation, a general fund revenue source, or any type of tax or fee imposed by the legislature must be approved by a two-thirds vote of the members of each house of the legislature and must include language authorizing the creation of a state debt under Article VIII, section 8, of the Montana constitution.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 5, part 16, and the provisions of Title 17, chapter 5, part 16, apply to [section 1].

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

Approved April 25, 2005

CHAPTER NO. 400

[SB 289]

AN ACT PROVIDING THAT A LOCAL GOVERNMENT WITH SELF-GOVERNING POWERS MAY NOT IMPOSE A LICENSE FEE OR

LICENSE TAX ON A REAL ESTATE BROKER OR SALESPERSON; AND AMENDING SECTION 37-51-312, MCA.

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

Section 1. Section 37-51-312, MCA, is amended to read:

“37-51-312. No taxation by municipality. ~~No~~ (1) A license fee or license tax may not be imposed on a real estate broker or salesperson as a condition to the practice of the broker’s or salesperson’s profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

(2) *This section does not prohibit a municipality or other political subdivision of the state from imposing a general business license fee or general business license tax on an establishment as a condition of conducting business in the municipality’s or other political subdivision’s jurisdiction.”*

Approved April 25, 2005

CHAPTER NO. 401

[SB 294]

AN ACT EXTENDING THE TIME FOR PROTESTS INVOLVING SPECIAL IMPROVEMENT DISTRICT PROJECTS IF THE NORMAL PROTEST PERIOD INCLUDES A HOLIDAY OTHER THAN A SUNDAY; AMENDING SECTIONS 7-12-2109, 7-12-4110, AND 7-12-4114, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district. (1) (a) ~~At~~ *Except as provided in subsection (1)(b), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. 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. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.*

(b) *If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.*

(2) (a) For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.”

Section 2. Section 7-12-4110, MCA, is amended to read:

“7-12-4110. Protest against proposed work or district. (1) (a) ~~At~~ *Except as provided in subsection (1)(b), at any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any*

owner of property liable to be assessed for the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(b) *If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.*

(2) A protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within the ~~15-day~~ protest period. The clerk shall endorse on the protest document the date and hour of its receipt by the clerk.

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

Section 3. Section 7-12-4114, MCA, is amended to read:

"7-12-4114. Resolution creating special improvement district. (1) ~~When~~ *The council may order proposed improvements after:*

(a) no protests have been delivered to the clerk of the city council within ~~15 days~~ *the time prescribed in 7-12-4110* after the date of the first publication of the notice of the passing of the resolution of intention;

(b) ~~when~~ *a protest shall have* has been found by ~~said council~~ to be insufficient or ~~shall have~~ *has* been overruled; or

(c) ~~when~~ *a protest against the extent of the proposed district shall have* has been heard and denied, ~~immediately thereupon, the council shall be deemed to have acquired jurisdiction to order the proposed improvements.~~

(2) Before ordering any of ~~said~~ *the* proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention ~~theretofore~~ introduced and passed by the council."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 402

[SB 314]

AN ACT REVISING COMMISSIONER QUALIFICATIONS FOR IRRIGATION DISTRICTS; DEFINING THE TERM "ENTITY"; AMENDING SECTION 85-7-1501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-7-1501, MCA, is amended to read:

"85-7-1501. Qualifications of commissioners and term of office. (1) ~~A person may not be a commissioner unless he is an owner of irrigable land within the division of the district he is to represent and is a resident of the county in which the division of the district or some portion of the division is situated. To qualify as a commissioner, an individual:~~

(a) shall own irrigable land within the division of the district that the individual would represent or hold an equity ownership in an entity that owns irrigable land within the division of the district that the individual would represent; and

(b) must be a resident of the county, or an adjoining county, in which some portion of the division of the district that the individual would represent is located.

(2) The commissioners appointed shall hold their respective offices until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner must be approved by the district court or judge of the district court and filed in the office of the clerk of the court.

(3) For the purposes of this section, the term "entity" means a corporation, a limited liability company, a business trust, an estate, a trust, a partnership, an unincorporated association, or a foundation."

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

Approved April 25, 2005

CHAPTER NO. 403

[SB 320]

AN ACT PROVIDING FOR THE REGULATION OF CONCENTRATED ANIMAL FEEDING OPERATIONS UNDER GENERAL PERMIT AUTHORIZATIONS; DEFINING THE TERMS "ANIMAL FEEDING OPERATION", "CONCENTRATED ANIMAL FEEDING OPERATION", "LARGE CONCENTRATED ANIMAL FEEDING OPERATION", AND "MEDIUM CONCENTRATED ANIMAL FEEDING OPERATION"; PROVIDING FEES FOR PERMITTING CONCENTRATED ANIMAL FEEDING OPERATIONS; PROVIDING FOR THE LEVEL OF ENVIRONMENTAL REVIEW OF CONCENTRATED ANIMAL FEEDING OPERATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Definitions. For the purposes of [sections 1 through 3], the following definitions apply:

(1) "Animal feeding operation" means a lot or facility where the following conditions are met:

(a) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(b) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) "Concentrated animal feeding operation" means an animal feeding operation that is defined as a large concentrated animal feeding operation or as a medium concentrated animal feeding operation or that is designated as a concentrated animal feeding operation in accordance with 40 CFR, part 122. Two or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of

determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at a minimum:

- (a) 700 mature dairy cows, whether milked or dry;
- (b) 1,000 veal calves;
- (c) 1,000 cattle other than mature dairy cows or veal calves;
- (d) 2,500 swine each weighing 55 pounds or more;
- (e) 10,000 swine each weighing less than 55 pounds;
- (f) 500 horses;
- (g) 10,000 sheep or lambs;
- (h) 55,000 turkeys;
- (i) 30,000 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;
- (j) 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;
- (k) 82,000 laying hens if the animal feeding operation uses other than a liquid manure-handling system;
- (l) 30,000 ducks if the animal feeding operation uses other than a liquid manure-handling system; or
- (m) 5,000 ducks if the animal feeding operation uses a liquid manure-handling system.

(4) "Medium concentrated animal feeding operation" means an animal feeding operation with the type and number of animals that fall within any of the ranges listed in subsection (4)(a) and that has been defined or designated as a concentrated animal feeding operation. An animal feeding operation is defined as a medium concentrated animal feeding operation if:

- (a) the type and number of animals that it stables or confines falls within any of the following ranges:
 - (i) 200-699 mature dairy cows, whether milked or dry;
 - (ii) 300-999 veal calves;
 - (iii) 300-999 cattle other than mature dairy cows or veal calves;
 - (iv) 750-2,499 swine each weighing 55 pounds or more;
 - (v) 3,000-9,999 swine each weighing less than 55 pounds;
 - (vi) 150-499 horses;
 - (vii) 3,000-9,999 sheep or lambs;
 - (viii) 16,500-54,999 turkeys;
 - (ix) 9,000-29,999 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;
 - (x) 37,500-124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;
 - (xi) 25,000-81,999 laying hens if the animal feeding operation uses other than a liquid manure-handling system;

(xii) 10,000-29,999 ducks if the animal feeding operation uses other than a liquid manure-handling system; or

(xiii) 1,500-4,999 ducks if the animal feeding operation uses a liquid manure-handling system; and

(b) either of the following conditions is met:

(i) pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Section 2. Permitting — concentrated animal feeding operation. (1) For the purpose of permitting concentrated animal feeding operations, the board shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an individual permit.

Section 3. Fees for concentrated animal feeding operation permits — environmental review. (1) (a) The fees for a general permit authorization or an individual permit are \$600 for the initial application and \$600 for each renewal.

(b) In addition to the fees provided for in subsection (1)(a), there is an annual fee for a general permit authorization or an individual permit. The fee is \$600 and is subject to the annual fee reduction provisions in 75-5-516(2)(b).

(2) The department is required to conduct only the type of environmental assessment that would be conducted for a routine action with limited environmental impact pursuant to Title 75, chapter 1, part 2, as the necessary level of environmental review for concentrated animal feeding operations that qualify for a general permit pursuant to [section 2]. For concentrated animal feeding operations that require an individual permit, the level of environmental review must be an environmental assessment unless the department determines that an environmental impact statement is required pursuant to 75-1-201. A programmatic environmental impact statement is not required for permitting conducted under [section 2].

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to concentrated animal feeding operations that are permitted or reviewed on or after January 1, 2005.

Approved April 25, 2005

CHAPTER NO. 404

[SB 328]

AN ACT PROVIDING FOR A TASK FORCE IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO STUDY THE PREVALENCE AND CARE OF AND TO RAISE AWARENESS ON THE CAUSES AND NATURE OF CERVICAL CANCER; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Task force on cervical cancer. (1) There is a task force on cervical cancer established in the department of public health and human services.

(2) The task force must be composed of at least 6 and no more than 10 members and must include:

- (a) an obstetrician-gynecologist;
- (b) a registered nurse;
- (c) a physician in family practice;
- (d) a member from the cancer research community;
- (e) the state epidemiologist; and
- (f) a cervical cancer survivor.

(3) The task force members must be appointed by the director to 2-year terms. The task force shall meet quarterly as needed. The task force members must be reimbursed for expenses as provided in 2-18-501 through 2-18-503. Additional members may be added to the task force upon a majority vote of the members.

(4) The task force shall:

- (a) review statistical and qualitative data on the prevalence and burden of cervical cancer in Montana;
- (b) raise public awareness on the causes and nature of cervical cancer;
- (c) identify strategies and new technologies that are effective in preventing and controlling the risk of cervical cancer;
- (d) identify and examine the limitations of existing laws, regulations, programs, and services with regard to coverage and awareness issues for cervical cancer;
- (e) include information and strategies relating to cervical cancer in a state comprehensive cancer control program;
- (f) facilitate coordination of and communication between state and local agencies and organizations;
- (g) receive and consider reports and testimony from individuals, including cervical cancer survivors, from leaders in the issue of cervical cancer, local health departments, community-based organizations, and voluntary health organizations, and from other public and private organizations statewide to learn more about contributions to prognosis, prevention, treatment, and improvement of cervical cancer prevention, diagnosis, and treatment in Montana.

(5) The task force shall issue a report to the children, families, health, and human services interim committee by August 1, 2006:

- (a) identifying the full impact of cervical cancer in Montana;
- (b) recommending strategies or actions to the department to reduce the occurrence of and burden and costs caused by cervical cancer; and
- (c) identifying how to increase public awareness of cervical cancer and the options for prevention.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Termination. [This act] terminates June 30, 2007.

Approved April 25, 2005

CHAPTER NO. 405

[SB 333]

AN ACT CLARIFYING A SCHOOL DISTRICT'S USE OF ITS RETIREMENT FUND TO PAY FOR BENEFITS FOR SCHOOL DISTRICT OR COOPERATIVE EMPLOYEES; REQUIRING A SCHOOL DISTRICT TO CHARGE THE RETIREMENT FUND FOR RETIREMENT BENEFITS FOR A DISTRICT EMPLOYEE WHOSE SALARY AND HEALTH-RELATED BENEFITS ARE PAID FROM THE DISTRICT'S IMPACT AID FUND; REQUIRING A COOPERATIVE TO CHARGE THE RETIREMENT FUND FOR RETIREMENT BENEFITS FOR A COOPERATIVE EMPLOYEE WHOSE SALARY AND HEALTH-RELATED BENEFITS ARE PAID FROM THE MISCELLANEOUS PROGRAMS FUND WITH MONEY RECEIVED FROM THE MEDICAID PROGRAM; AMENDING SECTION 20-9-501, 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 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 or 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 agreement 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; and*

(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.

(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) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) 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.

(vi) 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 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 the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.”

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to retirement benefits paid in the school fiscal year beginning on or after July 1, 2004.

Approved April 25, 2005

CHAPTER NO. 406

[SB 358]

AN ACT TO ALLOW IMPLEMENTATION OF LONG-TERM CARE PARTNERSHIPS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS ALLOWED BY FEDERAL LAW OR WAIVER; AMENDING SECTION 53-6-803, MCA; AND REPEALING SECTION 8, CHAPTER 195, LAWS OF 1997.

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

Section 1. Section 53-6-803, MCA, is amended to read:

“53-6-803. (~~Effective six months after occurrence of contingency~~) Long-term care insurance partnerships authorized. (1) The commissioner and the department may in their discretion ~~create~~ *establish* long-term care insurance partnerships if federal law permits those partnerships. ~~If created, the partnerships must be consistent with the requirements as provided for in federal law under 42 U.S.C. 1396p or if allowed by a waiver of federal law under section 1115 of Title XIX XI of the Social Security Act, 42 U.S.C. 1396, et seq. 1315.~~

(2) The ~~commissioner and the~~ department may in ~~their~~ *its* discretion collaborate with private insurers to ~~create~~ *implement* long-term care insurance partnerships that will allow individuals who have resources in excess of the resource limit for receipt of medical assistance under the Montana medicaid program to receive medical assistance benefits if those individuals are eligible for or require the level of care provided by a long-term care facility and meet the other program requirements ~~to qualify for those benefits in accordance with federal law or an approved waiver in order to facilitate the enrollment of persons into long-term care insurance plans.~~

(3) Under partnerships created pursuant to this section, individuals may qualify for special treatment of their resources if they purchase a long-term care insurance policy or certificate certified by the commissioner and the department as provided in 53-6-804 prior to becoming eligible for medical assistance benefits. *The department may modify eligibility and other medicaid requirements by administrative rule as provided in 53-6-805 and as allowed by state and federal law to encourage individuals to maintain long-term care insurance.*

(4) The long-term care insurance partnerships may in the department's discretion be based on a dollar-for-dollar model or any other model that is cost-neutral.”

Section 2. Repealer. Section 8, Chapter 195, Laws of 1997, is repealed.

Approved April 25, 2005

CHAPTER NO. 407

[SB 388]

AN ACT PROVIDING THAT INSURANCE COMPANIES THAT HAVE DIRECT REPAIR PROGRAMS WITH AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS MAY NOT LIMIT THE NUMBER OF AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS WITH WHOM THEY HAVE DIRECT REPAIR PROGRAMS AS LONG AS THE

AUTOMOBILE BODY REPAIR BUSINESSES OR LOCATIONS MEET CERTAIN CRITERIA; PROVIDING THAT A VIOLATION IS SUBJECT TO CEASE AND DESIST ORDERS OF THE COMMISSIONER OF INSURANCE; AND AMENDING SECTIONS 33-18-224 AND 33-18-1006, MCA.

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

Section 1. Section 33-18-224, MCA, is amended to read:

“33-18-224. Designation of specific automobile body repair shops businesses prohibited. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular automobile *body* repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or that provides an incentive or inducement for an insured person to use a particular automobile *body* repair business or location.

(2) (a) *Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.*

(b) *An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.*

(c) *Upon request, the insurance company shall provide, without prejudice or bias, the insured person with a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to the insured person and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:*

(i) *possesses the equipment necessary to undertake repairs;*

(ii) *undertakes training of management and technical personnel with respect to repair information and the claims process;*

(iii) *agrees to perform quality repairs at the prevailing competitive market price and that meet reasonable industry repair standards;*

(iv) *agrees to warrant the quality of work, including refinishing, in writing to the insured person, for a period of not less than 1 year from the date of repair;*

(v) *agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and*

(vi) *if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the*

necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the insured person.

(d) If the insured person requests the list provided for in subsection (2)(c), the insurance company shall inform the insured person that the insured person may use an automobile body repair business or location at the sole discretion of the insured person.

(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing an insured person with the list provided for in subsection (2)(c); or

(b) referring to a warranty issued by an automobile body repair business or location.

~~(2) For the purposes of this section, an incentive or inducement does not include:~~

~~(a) providing an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;~~

~~(b) providing an insured person or a customer with a list of particular body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location.~~

~~(3)~~(4) The insured may use a *an automobile body repair* business or location at the insured's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile ~~body-body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body-body~~ repair services than the lowest prevailing market price, as defined in 33-18-222.

~~(4) If the insured person uses an automobile repair business or location not on a list provided under subsection (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.~~

(5) If the insured person uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the insured person.

~~(5)~~(6) It is unlawful for an automobile *body* repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile *body* repair service.

~~(6)~~(7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

~~(7)~~(8) For purposes of this section, "automobile *body* repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 2. Section 33-18-1006, MCA, is amended to read:

“33-18-1006. Desist orders for prohibited practices. Violations of 33-18-221 through ~~33-18-223~~ 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.”

Approved April 25, 2005

CHAPTER NO. 408

[SB 406]

AN ACT INCREASING THE SURCHARGE FOR FILING A PETITION FOR DISSOLUTION OF MARRIAGE BY \$10 AND ALLOCATING THE INCREASE TO FUND CIVIL LEGAL ASSISTANCE FOR INDIGENT VICTIMS OF DOMESTIC VIOLENCE; AND AMENDING SECTIONS 3-2-714 AND 25-1-201, MCA.

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

Section 1. Section 3-2-714, MCA, is amended to read:

“3-2-714. Civil legal assistance for indigent victims of domestic violence account. (1) There is a civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. There must be paid into this account the filing fees paid under 25-1-201(3)(a) and ~~(6)~~ (5). The money in the account must be used solely for the purpose of providing legal representation for indigent victims in civil matters in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the account may not be used for class action lawsuits.

(2) The supreme court administrator shall establish procedures for the distribution and accountability of money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or administer the distribution of the funds.”

Section 2. Section 25-1-201, MCA, is amended to read:

“25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, ~~\$160~~ \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk’s office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$30;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3), and (5), ~~through (7) and (6)~~, fees collected by the clerk of district court must:

~~(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~

~~(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.~~

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, ~~\$9~~ \$19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q).~~

~~(6)~~(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

~~(7)~~(6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund for district court operations.

~~(8)~~(7) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund.”

Approved April 25, 2005

CHAPTER NO. 409

[SB 434]

AN ACT REVISING THE FORM FILING AND APPROVAL PROVISIONS OF THE INSURANCE CODE; PROVIDING REQUIREMENTS FOR CERTIFICATION AND DELIVERY; ALLOWING A FORM THAT IS NOT DISAPPROVED BY THE COMMISSIONER OF INSURANCE WITHIN 60 DAYS TO BE CONSIDERED APPROVED; PROVIDING REQUIREMENTS FOR INSURERS REGARDING NOTIFICATION OF FORM USE; PROVIDING REQUIREMENTS FOR THE COMMISSIONER REGARDING DISAPPROVALS OR WITHDRAWALS OF APPROVAL; PROVIDING THAT THE FORM FILING AND APPROVAL PROCESS FOR HEALTH MAINTENANCE ORGANIZATIONS AND FORMS ARE SUBJECT TO THE SAME REQUIREMENTS AS FOR INSURERS GENERALLY; AMENDING SECTIONS 33-1-501 AND 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 33-1-501, MCA, is amended to read:

“33-1-501. Filing and approval of forms — approval — review of disapproval or withdrawal of approval — application. (1) (a) An insurance policy or annuity contract form, certificate, enrollment form, application form, ~~viatical disclosure form~~, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form and, for the purposes of disability insurance, an outline of coverage as required by 33-22-244 and 33-22-521 have been filed with and approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine, other than ocean marine and foreign trade coverages, casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(b) A filing required by subsection (1)(a) must be submitted by an officer of the insurer with a certification in a form prescribed by the commissioner. The certification must state that to the best of the officer's knowledge and belief, the policy, contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate complies with the applicable provisions of Title 33.

~~(b)~~(c) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application form, or other related insurance form by the state of domicile may be waived by the commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the state of domicile.

(2) (a) ~~The filing must be made not less than 60 days in advance of before~~ *The filing must be made not less than 60 days in advance of before delivery and must be delivered by hand or sent by certified mail with a return receipt requested. The commissioner's office shall mark a filing with the date of receipt by the commissioner's office.*

(b) (i) If after 60 days from the date of receipt by the commissioner's office the commissioner has not approved or disapproved the form by a notice pursuant to the provisions in subsection (4), the form is considered approved for all purposes, subject to subsection (2)(c).

(ii) The running of the 60-day period is tolled for a period commencing on the date that the commissioner notifies the insurer of problems or questions and requests additional information from the insurer concerning a form filed pursuant to subsection (1)(a) and ending on the date that the insurer submits its response to the commissioner.

(iii) For purposes of tolling the 60-day period as provided in subsection (2)(b)(ii), the commissioner's request notification may be made electronically.

(c) In a letter separate from the original filing and delivered by hand or sent by certified mail with return receipt requested, the insurer shall notify the commissioner, at least 10 days before the use of the form in the market, that the insurer believes that:

(i) the form has been or will be considered approved; and

(ii) the insurer will begin marketing the form in Montana.

(d) The commissioner's office shall mark a letter received pursuant to subsection (2)(c) with the date of receipt by the commissioner's office.

(3) Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. ~~The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period.~~

(4) The commissioner may at any time, after notice and for cause shown, withdraw any approval.

~~(b)~~ Notice by the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer *of the specific reason or reasons for and the legal authority supporting the disapproval or withdrawal of approval in whole or in part. The disapproval or withdrawal of approval does not take effect unless*

it is issued after the commissioner has reviewed the form and provided notice to the person who filed the form pursuant to 33-1-314 and this subsection.

(5) After the date of the insurer's receipt of notice of disapproval or withdrawal of approval by the commissioner, the insurer may not deliver the form or issue the form for delivery in Montana.

(6) The insurer may request a hearing, as provided for in 33-1-701, for unresolved disputes regarding a disapproval or a withdrawal of approval.

~~(4)~~(7) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are not desirable or necessary for the protection of the public.

~~(5)~~(8) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

~~(6)~~(9) ~~This section and~~ Section 33-1-502 and this section do not apply to:

- (a) reinsurance;
- (b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection ~~(5)~~ (8);
- (c) ocean marine and foreign trade insurances.

~~(7)~~(10) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request. The certificates must meet the minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state law."

Section 2. Section 33-31-301, MCA, is amended to read:

"33-31-301. (Temporary) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner *in accordance with 33-1-501.*

(3) An evidence of coverage issued or delivered to a person residing in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

- (a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) except as provided in 33-22-262, a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) except as provided in 33-22-262, a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

(i) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner *in accordance with 33-1-501* and issued to the enrollee.

(5) (a) Except as provided in 33-22-262, a health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) Except as provided in 33-22-262, a health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

~~(6) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer. The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.~~

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-301. (Effective July 1, 2009) Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner *in accordance with 33-1-501*.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the

benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

- (i) emergency and urgent care;
- (ii) restrictions on the selection of primary or referral providers;
- (iii) restrictions on changing providers during the contract period;
- (iv) out-of-pocket costs, including copayments and deductibles;
- (v) charges for missed appointments or other administrative sanctions;
- (vi) restrictions on access to care if copayments or other charges are not paid;

and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the

insured resides on that date is amended to conform to the minimum requirements of those statutes.”

(i) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner *in accordance with 33-1-501* and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

~~(6) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer. The provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.~~

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section.”

Section 3. Effective date. [This act] is effective January 1, 2006.

Section 4. Applicability. [This act] applies to all policies, forms, and certificates filed with the commissioner of insurance on or after [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 410

[SB 435]

AN ACT PROVIDING FOR PROBATE OF A NONDOMICILIARY DECEDENT'S WILL THAT IS FILED AND NOT PROBATED IN A COURT IN THE DOMICILIARY STATE; AMENDING SECTIONS 72-3-203, 72-3-212, AND 72-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Nondomiciliary decedent — will filed and not probated in domiciliary state. A will of a nondomiciliary decedent that has been filed and not probated in a court in the domiciliary state may be proved for probate in this state by an authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has been filed and not submitted for probate in the court in the domiciliary state.

Section 2. Section 72-3-203, MCA, is amended to read:

“72-3-203. Probate and appointment under will — additional information required. (1) An application for informal probate of a will ~~shall~~ *must* state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application, ~~or~~ that an authenticated copy of a will probated in another jurisdiction accompanies the application, *or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1], accompanies the application;*

(b) that the applicant to the best of ~~his~~ *the applicant's* knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument ~~which~~ *that* is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate, as provided in this chapter, has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.

(2) An application for informal appointment of a personal representative to administer an estate under a will ~~shall~~ *must* describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment ~~shall~~ *must* adopt the statements in the application or petition for probate and state the name,

address, and priority for appointment of the person whose appointment is sought.”

Section 3. Section 72-3-212, MCA, is amended to read:

“72-3-212. Informal probate — clerk to make findings. In an informal proceeding for original probate of a will, the clerk shall determine whether:

- (1) the application is complete;
- (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant’s knowledge and belief;
- (3) the applicant appears from the application to be an interested person as defined in 72-1-103;
- (4) on the basis of the statements in the application, venue is proper;
- (5) an original, duly executed, and apparently unrevoked will, *authenticated copy of a will probated in another jurisdiction, or an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1],* is in the clerk’s possession;
- (6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and
- (7) it appears from the application that the time limit for original probate has not expired.”

Section 4. Section 72-3-301, MCA, is amended to read:

“72-3-301. Petition for formal testacy or appointment — contents — last will. (1) Petitions for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

- (a) requests an order as to the testacy of the decedent in relation to a particular instrument ~~which~~ *that* may or may not have been informally probated and determining the heirs;
- (b) contains the statements required for informal applications as stated in ~~the five subsections under 72-3-202; and the statements required by subsections (b) and (c) of 72-3-203(1)(b) and (1)(c);~~ and
- (c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is ~~neither~~ *not* in the possession of the court ~~nor accompanies or does not accompany~~ the petition, ~~and if no~~ *an* authenticated copy of a will probated in another jurisdiction ~~accompanies does not accompany~~ the petition, *or if an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1], does not accompany the petition,* the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs

without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted.”

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 72, chapter 3, part 2, and the provisions of Title 72, chapter 3, part 2, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the provisions of Title 72, chapter 3, part 3, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2005.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the probate of testate nondomiciliary decedents' estates that have not been closed before [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 411

[SB 452]

AN ACT AUTHORIZING A JUDGE TO ISSUE A STANDING NO CONTACT ORDER AND TO DIRECT LAW ENFORCEMENT TO SERVE THE ORDER ON DEFENDANTS CHARGED WITH PARTNER OR FAMILY MEMBER ASSAULT; PROVIDING FOR ORAL AND WRITTEN NOTIFICATION OF THE ORDER TO THE DEFENDANT; PROVIDING THAT VIOLATION OF A NO CONTACT ORDER IS A MISDEMEANOR; AND AMENDING SECTIONS 46-6-311 AND 46-9-108, MCA.

WHEREAS, the Legislature has reviewed and considered the report filed by the Montana Domestic Violence Fatality Review Commission, which conducted case reviews of domestic violence homicides of spouses, partners, and children; and

WHEREAS, victims of domestic violence are at high risk for additional threats, violence, and homicide; and

WHEREAS, a victim's participation in a prosecution is jeopardized when a domestic violence assault is followed by intimidation in the form of threats and coercion; and

WHEREAS, courts have the authority to impose conditions on defendants charged with partner or family member assault when conditions will improve victim safety; and

WHEREAS, a court order restricting contact between the offender and the victim will improve victim safety.

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

Section 1. Partner or family member assault — no contact order — notice — violation of order — penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on all defendants charged with a violation of 45-5-206. The court order may specify conditions necessary to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as

defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on the defendant to stay away from the protected person's location.

(2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with a violation of 45-5-206. One copy of the order must be given to the defendant, and one copy must be filed with the court.

(3) The charge of a violation of 45-5-206 must be supported by a peace officer's affidavit of probable cause.

(4) The no contact order issued at the time that the defendant is charged with a violation of 45-5-206 is effective for 72 hours or until the defendant makes the first appearance in court.

(5) The court order must state:

"You have been charged with an assault on a partner or family member. You are not allowed to have contact with _____ (list names). You may not _____. Violation of this no contact order is a criminal offense under [this section], MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

(6) The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

(7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 at the time of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The court order shall specify protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

(b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may not be charged with a violation of this offense.

(c) An offender convicted of violation of a no contact order 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.

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

(a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an assault on a partner or family member from contacting a protected person.

(b) "Partner" or "family member" has the meaning provided in 45-5-206.

(c) "Protected person" means a victim of a partner or family member assault listed in a no contact order.

Section 2. Section 46-6-311, MCA, is amended to read:

“46-6-311. Basis for arrest without warrant — arrest of predominant aggressor — no contact order. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer’s evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.

(3) *If a judge has issued a standing order as provided in [section 1], a peace officer shall give a defendant charged with partner or family member assault both written and verbal notice of the no contact order issued pursuant to [section 1]. The notice must include specific conditions as ordered by the court.”*

Section 3. Section 46-9-108, MCA, is amended to read:

“46-9-108. Conditions upon defendant’s release — notice to victim of stalker’s release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant’s personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, *including in a case of partner or family member assault the restrictions contained in a no contact order issued under [section 1]*; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

Approved April 25, 2005

CHAPTER NO. 412

[SB 458]

AN ACT PROVIDING THAT THE PERIOD FOR THE COMMENCEMENT OF AN ACTION AGAINST A MUNICIPALITY ARISING FROM A DECISION OF THE MUNICIPALITY RELATING TO A LAND USE CONSTRUCTION OR DEVELOPMENT PROJECT IS 6 MONTHS FROM THE DATE OF THE WRITTEN DECISION; AND AMENDING SECTION 27-2-209, MCA.

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

Section 1. Section 27-2-209, MCA, is amended to read:

"27-2-209. Actions against local government or local government official. (1) The period prescribed for the commencement of an action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in ~~his~~ *that person's* official capacity and in virtue of ~~his~~ *that person's* office or by the

omission of an official duty, including the nonpayment of money collected upon an execution, is within 3 years; ~~but, except that~~ this subsection does not apply ~~for~~ to an action for an escape.

(2) The period prescribed for the commencement of an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process is within 1 year.

(3) Actions for claims against a county ~~which~~ *that* have been rejected by the county commissioners must be commenced within 6 months after the first rejection ~~thereof by such board~~.

(4) The period prescribed for the commencement of an action against a ~~municipal corporation~~ *municipality* for damages or injuries to property caused by a mob or riot is within 1 year.

(5) *The period prescribed for the commencement of an action against a municipality arising from a decision of the municipality relating to a land use, construction, or development project is 6 months from the date of the written decision.*

Approved April 25, 2005

CHAPTER NO. 413

[SB 466]

AN ACT PROVIDING FOR THE FORCED RECONVEYANCE OF TRUST INDENTURES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA; PROVIDING DEFINITIONS; PROVIDING NOTICE AND RECONVEYANCE FORMS; PROVIDING FOR THE RECOVERY OF COSTS BY TITLE INSURERS AND TITLE INSURANCE PRODUCERS WHEN BENEFICIARIES OR SERVICERS FAIL TO RECONVEY UPON THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE; AMENDING SECTIONS 71-1-303 AND 71-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 71-1-303, MCA, is amended to read:

“71-1-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Beneficiary” means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or the person’s successor in interest, who may not be the trustee.

(2) “Grantor” means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) “Servicer” means a person who collects loan payments on behalf of a beneficiary.

(4) (a) “Title insurance producer” means a person who holds a valid title insurance producer’s license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) *issue policies of the title insurer.*

(b) *Title insurance producer does not include an approved attorney.*

(5) *“Title insurer” means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer authorized to transact title insurance in this state.*

~~(6)~~(6) *“Trust indenture” means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.*

~~(7)~~(7) *“Trustee” means a person to whom the legal title to real property is conveyed by a trust indenture or the person’s successor in interest.”*

Section 2. Reconveyance of trust indenture — forms — objections to reconveyance. (1) A title insurer or title insurance producer may reconvey a trust indenture in accordance with the provisions of this section if:

(a) the obligation secured by the trust indenture has been fully paid by the title insurer or title insurance producer; or

(b) the obligation secured by the trust indenture was fully paid by a former title insurer, title insurance producer, or predecessor of the title insurer or title insurance producer.

(2) A title insurer or title insurance producer may reconvey a trust indenture regardless of whether the title insurer or title insurance producer is named as a trustee under a trust indenture.

(3) At the time that the obligation secured by the trust indenture is paid in full, or at any time after payment, the title insurer or title insurance producer shall deliver by certified mail a notice of intent to reconvey and a copy of the reconveyance to be recorded to the beneficiary or servicer at:

(a) the address specified in the trust indenture;

(b) any address for the beneficiary or servicer specified in the last-recorded assignment of the trust indenture;

(c) any address for the beneficiary or servicer specified in a request for notice recorded under 71-1-314; or

(d) the address shown on any payoff statement received by the title insurer or title insurance producer from the beneficiary or servicer.

(4) (a) The notice of intent to reconvey must contain the name of the beneficiary and the servicer if loan payments on the trust indenture are collected by a servicer, the name of the title insurer or title insurance producer, and the date that the notice is signed.

(b) The notice must be substantially in the following form:

“NOTICE OF INTENT TO RECONVEY

NOTICE IS HEREBY GIVEN TO YOU AS FOLLOWS:

1. THIS NOTICE CONCERNS THE (TRUST INDENTURE) DESCRIBED AS FOLLOWS:

(GRANTOR):

(BENEFICIARY):.....

RECORDING INFORMATION:

DOCUMENT NUMBER:

BOOK NUMBER:

PAGE NUMBER:

2. THE UNDERSIGNED CLAIMS TO HAVE PAID IN FULL OR POSSESSES SATISFACTORY EVIDENCE OF THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE DESCRIBED ABOVE.

3. THE UNDERSIGNED WILL FULLY RECONVEY THE TRUST INDENTURE DESCRIBED IN THIS NOTICE WITHIN 90 DAYS FROM THE DATE STATED ON THIS NOTICE UNLESS:

(A) A RECONVEYANCE OF THE TRUST INDENTURE HAS BEEN RECORDED; OR

(B) THE UNDERSIGNED HAS RECEIVED BY CERTIFIED MAIL A NOTICE STATING THAT THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS NOT BEEN PAID IN FULL OR THAT YOU OTHERWISE OBJECT TO THE RECONVEYANCE OF THE TRUST DEED. NOTICE MUST BE MAILED TO THE ADDRESS STATED ON THIS FORM.

(C) PURSUANT TO 71-1-307, MCA, A BENEFICIARY OR SERVICER MAY BE LIABLE FOR DAMAGES, COSTS, AND PENALTIES FOR FAILING TO RECONVEY A TRUST INDENTURE WITHIN 90 DAYS OF THE DATE STATED IN THIS NOTICE IF THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS BEEN FULLY PAID PRIOR TO THE DELIVERY OF THIS NOTICE.

4. A COPY OF THE RECONVEYANCE OF TRUST INDENTURE IS ENCLOSED WITH THIS NOTICE.

.....
(SIGNATURE OF TITLE INSURER OR TITLE INSURANCE PRODUCER)

.....
(ADDRESS OF TITLE INSURER OR TITLE INSURANCE PRODUCER)"

(5) (a) If, within 90 days from the day on which the title insurer or title insurance producer delivers the notice of intent to reconvey, the beneficiary or servicer does not send by certified mail to the title insurer or title insurance producer a notice that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture, the title insurer or title insurance producer may execute, acknowledge, and record a reconveyance of a trust indenture.

(b) A reconveyance of a trust indenture must be in substantially the following form:

“RECONVEYANCE OF TRUST INDENTURE

(Name of title insurer or title insurance producer) authorized to conduct business in this state reconveys, without warranty, the following trust property located in (name of county), state of Montana, that is covered by a trust indenture naming (name of grantor) as grantor, and (name of beneficiary) as beneficiary that was recorded on (date) in book at page as document number: (insert a description of the trust property.)

The undersigned title insurer or title insurance producer certifies as follows:

1. The undersigned title insurer or title insurance producer has fully paid the obligation secured by the trust indenture or possesses satisfactory evidence of the full payment of the obligation secured by the trust indenture.

2. As required by [section 2], the title insurer or title insurance producer delivered to the beneficiary or servicer a notice of intent to reconvey and a copy of the reconveyance.

3. The trust indenture has not been reconveyed and the title insurer or title insurance producer did not receive, within 90 days from the day on which the title insurer or title insurance producer delivered the notice of intent to reconvey to the beneficiary or servicer, a notice from the beneficiary or servicer, sent by certified mail, that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture.

.....
(Notarization) (Signature of title insurer or title insurance producer)”

(c) (i) A reconveyance of trust indenture executed and notarized in accordance with subsection (5)(b) may be recorded.

(ii) Except as provided in subsection (5)(c)(iii), a reconveyance of a trust indenture that is recorded in compliance with subsection (5)(c)(i) is valid regardless of any deficiency in the reconveyance procedure not disclosed in the reconveyance of trust indenture.

(iii) If the title insurer’s or title insurance producer’s signature on a reconveyance of trust recorded under subsection (5)(c)(i) is forged, the release of mortgage or reconveyance of trust is void.

(6) A reconveyance of trust indenture pursuant to the provisions of this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust indenture at the time that the trust indenture was reconveyed.

Section 3. Objection to reconveyance. A title insurer or title insurance producer may not record a reconveyance of trust indenture if, within 90 days of the date of the notice of intent to reconvey, the beneficiary or servicer notifies the title insurer or title insurance producer that the obligation has not been paid in full or that the beneficiary or servicer objects to the reconveyance.

Section 4. Liability of title insurer or title insurance producer. A title insurer or title insurance producer who reconveys a trust indenture is liable to the beneficiary for damages suffered by the beneficiary as a result of the reconveyance if:

- (1) the obligation secured by the trust indenture is not fully paid;
- (2) the title insurer or title insurance producer failed to comply with the provisions of [section 2]; or
- (3) the title insurer or title insurance producer acted with gross negligence or in bad faith in reconveying the trust indenture.

Section 5. Section 71-1-307, MCA, is amended to read:

“71-1-307. Reconveyance upon performance — liability for failure to reconvey. (1) Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary *or servicer*, shall reconvey the interest in real property described in the trust indenture to the grantor. ~~In the event~~ *If* the obligation is performed and the beneficiary *or*

servicer refuses to request reconveyance or the trustee refuses to reconvey the property *within 90 days of the request*, the beneficiary, *servicer*, or trustee ~~so refusing shall be~~ *who refuses is* liable as provided by law in the case of refusal to ~~execute a discharge or satisfaction of a mortgage on real property to the grantor~~ *for the sum of \$500 and all actual damages resulting from the refusal to reconvey.*

(2) *If a beneficiary or servicer has received a notice of intent to reconvey pursuant to [section 2] and has not timely requested a reconveyance or has not objected to the reconveyance within the 90-day period established in [section 2], the beneficiary or servicer is liable to the title insurer or title insurance producer for the sum of \$500 and all damages resulting from the failure.*

(3) *In an action by a grantor, title insurer, or title insurance producer to collect any sums due under this section, the court shall award attorney fees and costs to the prevailing party."*

Section 6. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 71, chapter 1, part 3, and the provisions of Title 71, chapter 1, part 3, apply to [sections 2 through 4].

Section 7. Applicability. [Section 5] applies to all trust indentures executed on or after [the effective date of this act].

Approved April 25, 2005

CHAPTER NO. 414

[SB 472]

AN ACT ALLOWING COUNTY COMMISSIONERS TO DESIGNATE PUBLIC PROJECTS FOR PURPOSES OF COUNTY JAIL WORK PROGRAMS; ALLOWING 2 DAYS' CREDIT AGAINST INCARCERATION FOR EACH DAY'S PARTICIPATION IN A COUNTY JAIL WORK PROGRAM; AMENDING SECTION 7-32-2226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-32-2226, MCA, is amended to read:

"7-32-2226. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of 7-32-2227 to work on ~~county public projects or for county departments~~ *public projects* as designated by the board of county commissioners. *Upon a request of a federal or state agency, city government, or nonprofit corporation and upon mutually agreeable terms or on their own action for county projects, the board of county commissioners may designate projects as public projects for purposes of this section.* A person participating in a county jail work program may not:

- (a) have the person's labor or other work contracted out to a private party;
- (b) be required to do labor or other work that furthers the private interests of a government employee or official;
- (c) be permitted or required to do labor or other work that relates to anything other than public projects, public services, or other public matters;

- (d) be used to displace any regular ~~county~~ *government* employee;
- (e) perform the duties of any vacant ~~county~~ *government* position; or
- (f) work on any construction or reconstruction project.

(2) A county may not reduce its current workforce in order to transfer the duties of a reduction to persons participating in a county jail work program.

(3) A person participating in a county work program may not be physically confined in the county jail during the course of the person's participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is ~~1 day~~ *2 days* of incarceration for the purposes of serving a sentence of imprisonment.

(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program.

(5) In order to ensure public safety, the sheriff may deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(6) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. ~~Failure~~ *An unexcused failure* to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

(7) Weed management, as defined in 7-22-2101, whether on public or private land, and other maintenance projects authorized by a board of county commissioners are county projects for purposes of 7-32-2225 through 7-32-2227."

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

Approved April 25, 2005

CHAPTER NO. 415

[SB 480]

AN ACT ELIMINATING THE COAL SEVERANCE TAX RATE INCENTIVE FOR IN-STATE ELECTRICAL PRODUCTION; AMENDING SECTION 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-35-103, MCA, is amended to read:

"15-35-103. (Temporary) Severance tax — rates imposed. (1) ~~(a)~~ A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

~~(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:~~

~~(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.~~

~~(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.~~

(2) "Value" means the contract sales price.

~~(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.~~

~~(4)~~(3) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

~~(5)~~(4) In addition to the exemption described in subsection ~~(4)~~ (3), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons. (Terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)

15-35-103. (Effective January 1, 2006) Severance tax — rates imposed. (1) ~~(a)~~ A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

~~(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:~~

~~(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.~~

~~(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.~~

(2) "Value" means the contract sales price.

~~(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.~~

~~(4)~~(3) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.”

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

Approved April 25, 2005

CHAPTER NO. 416

[SB 481]

AN ACT MERGING OCCUPATIONAL DISEASES INTO THE WORKERS' COMPENSATION ACT; ESTABLISHING LEGISLATIVE INTENT TOWARD OCCUPATIONAL DISEASES AS PUBLIC POLICY; DEFINING "OCCUPATIONAL DISEASE"; PROVIDING FOR THE LIABILITY OF INSURERS AND COMPENSATION FOR OCCUPATIONAL DISEASES UNDER THE WORKERS' COMPENSATION ACT; PROVIDING FOR TIME FOR CLAIMS TO BE PRESENTED; AMENDING SECTIONS 2-15-2015, 30-9A-109, 37-1-131, 39-71-105, 39-71-106, 39-71-107, 39-71-116, 39-71-201, 39-71-206, 39-71-211, 39-71-315, 39-71-316, 39-71-317, 39-71-403, 39-71-407, 39-71-416, 39-71-525, 39-71-601, 39-71-603, 39-71-612, 39-71-743, 39-71-915, 39-71-1105, 39-71-2401, 39-71-2406, 39-71-2408, 39-71-2411, 39-73-104, 39-73-107, 45-6-301, 71-3-1118, AND 85-5-101, MCA; REPEALING SECTIONS 39-72-101, 39-72-102, 39-72-103, 39-72-201, 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-305, 39-72-310, 39-72-401, 39-72-402, 39-72-403, 39-72-404, 39-72-405, 39-72-408, 39-72-509, 39-72-601, 39-72-602, 39-72-606, 39-72-607, 39-72-608, 39-72-701, 39-72-703, 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-708, 39-72-709, 39-72-711, 39-72-712, AND 39-72-714, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Applicability of workers' compensation act — exceptions. Except as provided in 39-71-407, 39-71-601, and 39-71-603, this chapter applies to injuries and occupational diseases.

Section 2. Compensation for occupational diseases and medical benefits — diminution of compensation. (1) Compensation for occupational diseases must be equal to the compensation and medical benefits provided for injuries in this chapter.

(2) When the same medical condition may be claimed as an injury and an occupational disease, compensation payable to the claimant, the claimant's beneficiaries, or the claimant's dependents may not be duplicated for the same conditions over the same time period.

Section 3. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease, if an autopsy is necessary to determine the cause of death, an autopsy may be requested by an insurer. The autopsy must be made under the supervision of the county coroner or a medical examiner. The expense of the autopsy must be paid by the insurer.

Section 4. Benefits for pneumoconiosis. (1) Pneumoconiosis is an occupational disease that is compensable under this part. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but

not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

(2) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of employment.

Section 5. Prohibiting supplementing of benefits. A person receiving compensation or benefits under chapter 73 of this title is not entitled to compensation or benefits under this chapter.

Section 6. Section 2-15-2015, MCA, is amended to read:

"2-15-2015. Workers' compensation fraud investigation and prosecution office. There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation insurance fund or the department of labor and industry on behalf of the uninsured employers' fund. The office is under the supervision and control of the attorney general and consists of:

(1) one or more investigators qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, ~~chapters chapter 71 and 72~~, at the request of the state compensation insurance fund or the department of labor and industry on behalf of the uninsured employers' fund; and

(2) one or more attorneys licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, ~~chapters chapter 71 and 72~~. The attorneys may also assist county attorneys in prosecuting violations of Title 39, ~~chapters chapter 71 and 72~~, without charge to the county.

(3) The state compensation insurance fund, the department of labor and industry, and the department of justice shall submit to the legislature for approval one proposed biennial budget for the workers' compensation fraud office. The proposed budget for staffing and related expenses must be based upon the needs of the state compensation insurance fund and the department of labor and industry on behalf of the uninsured employers' fund for investigating and prosecuting workers' compensation fraud."

Section 7. Section 30-9A-109, MCA, is amended to read:

"30-9A-109. Scope. (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9A-110; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9A-333 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) 30-9A-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) 30-9A-404 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents under the interest in real property, except to the extent that provision is made for:

(i) liens on real property in 30-9A-203 and 30-9A-308;

(ii) fixtures in 30-9A-334;

(iii) fixture filings in 30-9A-501, 30-9A-502, 30-9A-512, 30-9A-516, and 30-9A-519; and

(iv) security agreements covering personal and real property in 30-9A-604;

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds;

(m) a transfer by a government or governmental subdivision or agency;

(n) an assignment of a deposit account in a consumer transaction, except that 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds; or

(o) an assignment of payments made to or on behalf of claimants pursuant to Title 39, chapter 51, 71, ~~72~~, or 73.”

Section 8. Section 37-1-131, MCA, is amended to read:

“37-1-131. Duties of boards — quorum required. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) 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 its jurisdiction. The hearings must be conducted by a hearing examiner when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), 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 ~~or 72~~;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) 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.

(6) 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.”

Section 9. Section 39-71-105, MCA, is amended to read:

“39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, ~~chapters~~ *chapter* 71 ~~and 72~~, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement 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; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer,

and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) 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.

(4) Title 39, ~~chapters~~ *chapter 71 and 72*, must be construed according to ~~their~~ *its* terms and not liberally in favor of any party.

(5) 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, as is the case with repetitive injury claims, 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 10. Section 39-71-106, MCA, is amended to read:

"39-71-106. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of ~~chapter 72~~ or this chapter."

Section 11. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state adjusters.

(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 ~~and the Occupational Disease Act of Montana~~ must be adjusted by a person in Montana. For a claim to be considered as adjusted by a person in Montana, the person adjusting 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 adjust 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 ~~and the Occupational Disease Act of Montana~~ at the Montana office of the person adjusting 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 adjuster's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) 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 requested by a claimant are denied, 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.

(5) 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.

(6) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

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

(8) (a) For 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 12. 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 ~~and the Occupational Disease Act of Montana~~ 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) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "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 (5)(a) through (5)(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 (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "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. 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) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "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, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "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) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) (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.*

~~(20)~~(21) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(21)~~(22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(22)~~(23) "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.

~~(23)~~(24) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(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.

~~(24)~~(25) "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.

~~(25)~~(26) The “plant of the employer” includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer’s usual trade, business, or occupation.

~~(26)~~(27) “Primary medical services” means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(27)~~(28) “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)~~(29) “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)~~(30) “Reasonably safe tools and 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.

~~(30)~~(31) (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)~~ (31), “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)~~(32) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(32)~~(33) “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.

~~(33)~~(34) “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.

~~(34)~~(35) "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.

~~(35)~~(36) "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.

~~(36)~~(37) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury 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-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area where the physician assistant-certified 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 ~~(36)(a)~~ (37)(a) through ~~(36)(e)~~ (37)(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, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area in which the advanced practice registered nurse is located.

~~(37)~~(38) "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.

~~(38)~~(39) "Year", unless otherwise specified, means calendar year."

Section 13. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts Act and the statutory occupational safety acts *that* the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act ~~and the Occupational Disease Act of Montana~~ without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act ~~and the Occupational Disease Act of Montana~~ and the statutory occupational safety acts that the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the

preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments 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 a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on each succeeding April 30, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%.

Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30, 2001, and on of each succeeding April 30 year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 14. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department and state fund — investigative and prosecution services. (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

(2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of ~~Title 39, chapters~~ *this chapter 71 and 72.*"

Section 15. Section 39-71-211, MCA, is amended to read:

“39-71-211. Fraud detection and prevention unit — expenditure accounting. (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under Title 39, ~~chapters~~ *chapter* 71 ~~and 72~~, that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers’ compensation fraud investigation and prosecution office established in 2-15-2015.

(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended.”

Section 16. Section 39-71-315, MCA, is amended to read:

“39-71-315. Prohibited actions — penalty. (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under ~~chapter 72~~ or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under ~~chapter 72~~ or 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 17. Section 39-71-316, MCA, is amended to read:

“39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under ~~chapter 72~~ or this chapter, by signing the claim, affirms the information filed is true and correct to the best of that person’s knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under ~~chapter 72~~ or this chapter is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), “person” includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount

paid by an insurer on the false claim, provided that the amount does not exceed \$50,000. If upon demand of the department the person refuses to pay the fine, the department may petition the workers' compensation court to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of ~~chapter 72 or~~ this chapter."

Section 18. Section 39-71-317, MCA, is amended to read:

"39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under ~~chapter 72 or~~ this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The workers' compensation court has exclusive jurisdiction to administer or resolve a dispute concerning the reemployment preference under this section. A dispute concerning the reemployment preference is not subject to mediation or a contested case hearing."

Section 19. 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 — definition. (1) 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 ~~make appropriation of and~~ 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.

(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 ~~chapter 72~~ and 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 ~~chapter 72~~ and 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) The provisions of subsection (1) do not apply to the Montana university system.

(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system."

Section 20. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers — limitations. (1) ~~Each~~ *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) (a) An insurer is liable for an injury, as defined in 39-71-119, 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 aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (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) 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) 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.

(6) 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.

(7) *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 with an occupational disease that arises out of or is contracted in the course and scope of employment.*

(8) *Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:*

(a) *the occupational disease is established by objective medical findings; and*

(b) *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.*

(9) *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.*

(10) *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; or*

(b) *the time that the employee knew or should have known that the condition was the result of an occupational disease.*

(11) *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.*

(12) *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 21. Section 39-71-416, MCA, is amended to read:

"39-71-416. Benefit reduction for third-party recovery. (1) If an employee is injured or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits paid or that are required to be paid to the employee or beneficiary pursuant to *this* chapter ~~71 or 72~~ as a result of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party recovery, settlement, or award.

(2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to 39-71-414.

(3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be offset by any reduction in benefits pursuant to subsection (1)."

Section 22. Section 39-71-525, MCA, is amended to read:

“39-71-525. Confidentiality of records — exception for use by public employees. Information obtained from any individual under this part is confidential and may not be disclosed, sold, or opened to public inspection except to department employees when necessary to allow them to perform their public duties under Title 39, ~~chapters chapter 71 and 72~~, or to provide relevant and necessary information to other public entities or pursuant to a subpoena issued upon a showing of compelling state interest.”

Section 23. Section 39-71-601, MCA, is amended to read:

“39-71-601. Statute of limitation on presentment of claim — waiver.

(1) ~~In case of personal injury or death~~ *Except for a claim for benefits for occupational diseases pursuant to subsections (3) and (4), all claims in the case of personal injury or death must be forever barred unless signed by the claimant or the claimant’s representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant’s behalf.*

(2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

- (a) lack of knowledge of disability;
- (b) latent injury; or
- (c) equitable estoppel.

(3) *When a claimant seeks benefits for an occupational disease, the claimant’s claims for benefits must be presented in writing to the employer, the employer’s insurer, or the department within 1 year from the date that the claimant knew or should have known that the claimant’s condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer’s insurer, or the department within 1 year from the date that the beneficiary knew or should have known that the decedent’s death was related to an occupational disease.*

~~(4)~~ (4) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers’ compensation court.”

Section 24. Section 39-71-603, MCA, is amended to read:

“39-71-603. Notice of injuries other than death to be submitted within thirty days — exception. (1) A claim to recover benefits under the Workers’ Compensation Act for injuries not resulting in death may not be considered compensable unless, within 30 days after the occurrence of the accident that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer’s insurer by the injured employee or someone on the employee’s behalf. Actual knowledge of the accident and injury on the part of the employer or the employer’s managing agent or superintendent in charge of the work in which the injured employee was engaged at the time of the injury is equivalent to notice.

(2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed

designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the injury.

(3) *This section does not apply to occupational diseases.*

Section 25. Section 39-71-612, MCA, is amended to read:

“39-71-612. Costs and attorney fees that may be assessed against insurer by workers’ compensation judge — barring of attorney fees under common fund or other doctrines. (1) If an insurer pays or submits a written offer of payment of compensation under *this* chapter ~~71 or 72 of this title~~ but controversy relates to the amount of compensation due, the case is brought before the workers’ compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, reasonable attorney fees and costs as established by the workers’ compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of attorney fees under subsection (1) may be made only if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(4) Attorney fees may be awarded only under the provisions of subsections (1) and (2) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.”

Section 26. Section 39-71-743, MCA, is amended to read:

“39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law; or

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to ~~chapter 71 or 72 of this title~~ *chapter*.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers’ Compensation Act ~~or Occupational Disease Act of Montana~~, the liability for payment of the claim is the responsibility of the appropriate workers’ compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not

payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.”

Section 27. Section 39-71-915, MCA, is amended to read:

“39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, “paid losses” means the following benefits paid during the preceding calendar year for injuries covered by the ~~Montana Workers’ Compensation Act and the Occupational Disease Act of Montana~~ without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion

of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge."

Section 28. Section 39-71-1105, MCA, is amended to read:

"39-71-1105. Managed care organizations — application — certification. (1) A health care provider, a group of medical service providers, or an entity with a managed care organization may make written application to the department to become certified under this section to provide managed care

to ~~injured~~ workers for injuries or *occupational diseases* that are covered under this chapter ~~or for occupational diseases that are covered under the Occupational Disease Act of Montana~~. However, this section does not authorize an organization that is formed, owned, or operated by a workers' compensation insurer or self-insured employer other than a health care provider to become certified to provide managed care. When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought.

(2) Each application for certification must be accompanied by an application fee if prescribed by the department. A certificate is valid for the period prescribed by the department, unless it is revoked or suspended at an earlier date.

(3) The department shall establish by rule the form for the application for certification and the required information regarding the proposed plan for providing medical services. The information includes but is not limited to:

(a) a list of names of each individual who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in the state;

(b) names of the individuals who will be designated as treating physicians and who will be responsible for the coordination of medical services;

(c) a description of the times, places, and manner of providing primary medical services under the plan;

(d) a description of the times, places, and manner of providing secondary medical services, if any, that the applicants wish to provide; and

(e) satisfactory evidence of the ability to comply with any financial requirements to ensure delivery of service in accordance with the plan that the department may require.

(4) The department shall certify a group of medical service providers or an entity with a managed care organization to provide managed care under a plan if the department finds that the plan:

(a) proposes to provide coordination of services that meet quality, continuity, and other treatment standards prescribed by the department and will provide all primary medical services that may be required by this chapter in a manner that is timely and effective for the worker;

(b) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of services;

(c) provides adequate methods of peer review and service utilization review to prevent excessive or inappropriate treatment, to exclude from participation in the plan those individuals who violate these treatment standards, and to provide for the resolution of any medical disputes that may arise;

(d) provides for cooperative efforts by the worker, the employer, the rehabilitation providers, and the managed care organization to promote an early return to work for the injured worker;

(e) provides a timely and accurate method of reporting to the department necessary information regarding medical and health care service cost and utilization to enable the department to determine the effectiveness of the plan;

(f) authorizes workers to receive medical treatment from a primary care physician who is not a member of the managed care organization but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, that the worker may require and if that primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care organization. As used in this subsection (4)(f), "primary care physician" means a physician who is qualified to be a treating physician and who is a family practitioner, a general practitioner, an internal medicine practitioner, or a chiropractor.

(g) complies with any other requirements determined by department rule to be necessary to provide quality medical services and health care to injured workers.

(5) The department shall refuse to certify or may revoke or suspend the certification of a health care provider, a group of medical service providers, or an entity with a managed care organization to provide managed care if the department finds that:

(a) the plan for providing medical care services fails to meet the requirements of this section; and

(b) service under the plan is not being provided in accordance with the terms of a certified plan."

Section 29. Section 39-71-2401, MCA, is amended to read:

"39-71-2401. Disputes — jurisdiction — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter ~~or chapter 72~~, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply

with this subsection. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter."

Section 30. Section 39-71-2406, MCA, is amended to read:

"39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under ~~chapter 71 or 72 of this title~~ *chapter* if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration."

Section 31. Section 39-71-2408, MCA, is amended to read:

"39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under ~~chapter 71 or 72 of this title~~ *chapter*, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties."

Section 32. Section 39-71-2411, MCA, is amended to read:

"39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under ~~chapter 71 or 72 of this title~~ *chapter* may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 25 days of the mailing of the mediator's report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the

determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator;
or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Section 33. Section 39-73-104, MCA, is amended to read:

"39-73-104. Eligibility requirements for benefits. Payment shall ~~shall~~ *must* be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, ~~which that~~ *results in his the person's* total disability so as to render it impossible for ~~him the person~~ *to follow* continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which ~~he the person~~ *would* receive a payment under this chapter, compensation under ~~The Occupational Disease Act of Montana, as provided by chapter 72 of this title [section 4],~~ *which will equal the sum of \$200."*

Section 34. Section 39-73-107, MCA, is amended to read:

"39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis must be granted a payment by the department of \$250 a month, subject to any additional appropriations. If the person is receiving payments under ~~the Occupational Disease Act of Montana, as provided by chapter 72 of this title, [section 4]~~ *that are less in the aggregate than \$200, then the person is entitled to a payment under this chapter of the difference between the amount received under the Occupational Disease Act of Montana, as provided by chapter 72 of this title [section 4]; and \$250 a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section."*

Section 35. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 ~~or 72~~, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; or

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) A person convicted of the offense of theft of property not exceeding \$1,000 in value 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. 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) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,000 in value or theft of any commonly domesticated hoofed animal shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.”

Section 36. Section 71-3-1118, MCA, is amended to read:

“71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers’ Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, or ambulatory surgical facility; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan.”

Section 37. Section 85-5-101, MCA, is amended to read:

“85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of the judge’s discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to

obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees and certificate holders, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71 ~~or 72~~, as a result of the performance of duties as a water commissioner."

Section 38. Repealer. Sections 39-72-101, 39-72-102, 39-72-103, 39-72-201, 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-305, 39-72-310, 39-72-401, 39-72-402, 39-72-403, 39-72-404, 39-72-405, 39-72-408, 39-72-509, 39-72-601, 39-72-602, 39-72-606, 39-72-607, 39-72-608, 39-72-701, 39-72-703, 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-708, 39-72-709, 39-72-711, 39-72-712, and 39-72-714, MCA, are repealed.

Section 39. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 1].

(2) [Sections 2 through 5] are 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 [sections 2 through 5].

Section 40. Coordination instruction. If House Bill No. 126 is passed and approved and if it includes a section that repeals 39-71-416, then [section 21 of this act], amending 39-71-416, is void.

Section 41. Direction to code commissioner. The code commissioner is directed to change any reference to chapter 72 of Title 39 that appears in legislation enacted by the 2005 legislature to a reference to chapter 71 of Title 39.

Section 42. 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 43. Effective date — applicability. [This act] is effective July 1, 2005, and applies to occupational diseases that occur on or after July 1, 2005.

Approved April 25, 2005

CHAPTER NO. 417

[SB 487]

AN ACT REVISING LAWS ON SCHOOL BUS SAFETY; INCREASING THE FOOTAGE REQUIREMENT IN WHICH A MOTOR VEHICLE MUST STOP BEFORE REACHING A SCHOOL BUS WHEN BUS LIGHTS ARE FLASHING; PROVIDING THAT A PERSON WHO OBSERVES A VIOLATION MAY PREPARE A VIOLATION REPORT; AMENDING SECTIONS 61-8-351 AND 61-8-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-8-351, MCA, is amended to read:

“61-8-351. Meeting or passing school bus — vehicle operator liability for violation — penalty. (1) ~~The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or~~ Upon overtaking from either direction ~~any~~ a school bus that has stopped on the highway or street to receive or discharge ~~any~~ school children, a driver of a motor vehicle:

(a) shall stop the motor vehicle not less than ~~10~~ *approximately 15* feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a motor vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be

prepared to stop when meeting or overtaking from either direction ~~any~~ a school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the ~~vehicle~~ *school bus* is stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a *school bus* is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:

(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.

(b) The separate roadway must be designed, constructed, and signed specifically for use by school buses, with sufficient space for safe ingress and egress from the main traveled way.

(c) The pullout must be approved by the local affected school district, by a resolution of the district trustees, and by the district superintendent as a mandatory school bus stop for receiving and discharging school children.

(5) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

(6) The driver of a *motor* vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

~~(7) Whenever a vehicle is established to have been in violation of subsection (1), the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.~~

(7) (a) *A person who observes a violation of this section may prepare a written, in addition to an oral, report indicating that a violation has occurred. The report may contain information concerning the violation, including:*

(i) the time and approximate location at which the violation occurred;

(ii) the license plate number and color of the motor vehicle involved in the violation;

(iii) identification of the motor vehicle as a passenger car, truck, bus, motorcycle, or other type of motor vehicle; and

(iv) a description of the person operating the motor vehicle when the violation occurred.

(b) A report under subsection (7)(a) constitutes particularized suspicion under 46-5-401(1) that an operator of the vehicle committed a violation of this section.

(8)(8) Violation of subsection (1) is punishable upon conviction by a fine of not more than \$500.”

Section 2. Section 61-8-715, MCA, is amended to read:

“61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b) or convicted of reckless endangerment of a highway worker under 61-8-301(4) shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than \$25 or more than \$300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than \$50 or more than \$500, or both.

(2) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding \$10,000, by incarceration for a term not to exceed 1 year, or both. Section ~~61-8-351(7)~~ 61-8-351(8) does not apply to a prosecution under 61-8-301(1)(b) that is punishable under this subsection.”

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

Approved April 25, 2005

CHAPTER NO. 418

[SB 498]

AN ACT INCREASING THE LIMIT TO \$400,000 FOR A LOAN TO A PRIVATE PERSON THAT IS NOT A WATER USERS' ASSOCIATION OR DITCH COMPANY AND \$3 MILLION FOR A LOAN TO A WATER USERS' ASSOCIATION OR DITCH COMPANY FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT OR THE RENEWABLE RESOURCE LOAN PROCEEDS ACCOUNT; AMENDING SECTION 85-1-613, MCA; AND PROVIDING A TERMINATION DATE.

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

Section 1. Section 85-1-613, MCA, is amended to read:

“85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan exceeds the lesser of ~~\$200,000~~ \$400,000 or 80% of the fair market value of the security given for the project. In

determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan would exceed the lesser of ~~\$300,000~~ *\$3 million* or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the renewable resource grant and loan program state special revenue account or renewable resource loan proceeds account if the loan exceeds the lesser of \$200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

Section 2. Termination. The amendment to 85-1-613(2) terminates June 30, 2007.

Approved April 25, 2005

CHAPTER NO. 419

[SB 503]

AN ACT ELIMINATING AUTHORIZATION FOR THE TETON-SPRING CREEK BIRD PRESERVE AND ITS SPECIAL ARCHERY SEASON; AND REPEALING SECTION 87-5-405, MCA.

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

Section 1. Repealer. Section 87-5-405, MCA, is repealed.

Approved April 25, 2005

CHAPTER NO. 420

[SB 504]

AN ACT SPECIFYING THE USE OF THE ANNUAL ATTORNEY LICENSE TAX; AMENDING SECTION 37-61-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 37-61-211, MCA, is amended to read:

“37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice ~~his profession~~ within the state is required to pay a license tax of ~~\$25~~ \$25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) (a) *The tax collections must be allocated to the supreme court for operations of the following commissions or other entities:*

- (i) *commission on code of judicial conduct;*
- (ii) *commission on courts of limited jurisdiction;*
- (iii) *commission on practice;*
- (iv) *commission on technology;*
- (v) *district court council;*
- (vi) *judicial nomination commission;*
- (vii) *judicial standards commission;*
- (viii) *sentence review division; and*
- (ix) *uniform district court rules commission.*

(b) *The court administrator shall, as provided in 3-1-702(2), report annually on expenditures authorized in subsection (3)(a) of this section at the first meeting of the law and justice interim committee after the end of each fiscal year.*

~~(4)~~ (4) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.”

Section 2. Effective date. [This act] is effective January 1, 2006.

Approved April 25, 2005

CHAPTER NO. 421

[HB 35]

AN ACT PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR THE NUMBER OF HIGHWAY PATROL OFFICER POSITIONS EXISTING ON JUNE 30, 2006; PROVIDING FOR BIENNIAL SALARY INCREASES AFTER THAT DATE; PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR NEW HIGHWAY PATROL OFFICER POSITIONS CREATED AFTER THAT DATE; PROVIDING A FUNDING MECHANISM FOR THE INCREASES BY RAISING CERTAIN VEHICLE REGISTRATION FEES; EXEMPTING THE HIGHWAY PATROL FROM VACANCY SAVINGS; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-18-303, 17-7-502, AND 61-3-321, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from \$106.6 million in 1973 to \$780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid \$4.50 an hour (\$9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers.

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

Section 1. Section 2-18-303, MCA, is amended to read:

“2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) through ~~(9)~~ (10).

~~(c) On the first day of the first complete pay period in fiscal year 2004, each employee is entitled to the amount of the employee's base salary as it was on June 30, 2003.~~

~~(d)~~(c) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each employee must be increased by an amount equal to 25 cents an hour or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection ~~(1)(f)~~ (1)(e).

~~(e)~~(d) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f)~~(e) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay schedule provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal ~~years 2004 and~~ year 2005.

~~(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.~~

~~(iii)~~(ii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection ~~(3)(a)(iii)~~ (3)(a)(ii) does not provide for a step advancement.

(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for *the* fiscal years *year* ending ~~June 30, 2004, and~~ June 30, 2005, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's

bargaining unit has ratified a completely integrated collective bargaining agreement.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.

(7) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(8) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(9) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.

(10) (a) *Montana highway patrol officer base salaries and biennial salary increases must be established through an alternative pay and classification plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary and any biennial salary increase for existing and entry-level highway patrol officer positions. The county sheriff departments in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis*

and Clark, Gallatin, Flathead, and Dawson. The base salary and biennial salary increases for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(d) (i) Except as provided in subsection (10)(d)(ii), the survey and plan must be completed at least 6 months before the start of each regular legislative session.

(ii) The first survey must be completed by January 1, 2006, for the plan to be implemented for the first full pay period in fiscal year 2007.”

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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; [section 4]; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 3. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — 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, reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, \$13.75 in calendar year 2004 and, in each subsequent year, \$17;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) 2,850 pounds and over, \$10; and

(ii) under 2,850 pounds, \$5;

(d) off-highway vehicles registered pursuant to 23-2-817, \$9 in calendar year 2004 and, in each subsequent year, \$19.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, \$18.75 in calendar year 2004 and, in each subsequent year, \$22;

(f) logging trucks less than 1 ton, \$23.75;

(g) motor homes, \$22.25;

(h) motorcycles and quadricycles, \$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$9.75 in calendar year 2004 and, in each subsequent year, \$11.25. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(k) travel trailers, \$11.75. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(l) recreational vehicles, \$3.50 in calendar year 2004 and, in each subsequent year, \$9.75. If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(2) (a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.

(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.

(3) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, \$5 in calendar year 2004 and, in each subsequent year, \$16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of \$5 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) 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, 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.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) (a) Except as provided in 61-3-562 and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.

(b) The following vehicles are not subject to the fee:

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(ii) off-highway vehicles registered pursuant to 23-2-817; and

(iii) vehicles bearing license plates described in 61-3-458(3)(d).

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(10) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(11) (a) Unless a person exercises the option in subsection (11)(b), an additional fee of \$4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. The fee must be deposited in the state general fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(c)(vii).

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (11)(a). If a written election is made, the fee may not be collected.

(12) For each vehicle subject to a registration fee under subsection (1), an additional fee of \$5 must be collected and forwarded to the department of revenue. The department of revenue shall deposit the \$5 in the account established in [section 4].

Section 4. Special revenue account to partially fund highway patrol officers' salaries — statutory appropriation. (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to 2-18-303(10):

(a) an increase in the base salary for the number of highway patrol officer positions existing on June 30, 2006;

(b) the base salary and associated operating costs for new highway patrol officer positions created after June 30, 2006; and

(c) biennial salary increases after June 30, 2006, for highway patrol officers.

Section 5. Montana highway patrol exempt from vacancy savings — report to audit committee. (1) Vacancy savings may not be imposed on authorized positions in the Montana highway patrol.

(2) For purposes of this section:

(a) "authorized positions" means those positions included in the list of current authorized positions that the Montana highway patrol is required to maintain under 2-18-206; and

(b) "vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.

(3) Each fiscal year, the department of justice shall provide to the legislative audit committee a detailed report on all positions in the Montana highway patrol. At a minimum, the report must include the following information:

(a) the number of positions that were filled during the year and the average salary paid at hire;

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant;

(c) the total number of hours spent on patrol during the year broken out by enforcement activity and position title.

Section 6. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 44, chapter 1, part 5, and the provisions of Title 44, chapter 1, part 5, apply to [section 4].

(2) [Section 5] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, apply to [section 5].

Section 7. Coordination instruction. If [this act] and House Bill No. 447 are both passed and approved, then 2-18-303 must be amended as follows:

“2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections ~~(6) through (9)~~ (5) through (9).

(c) On the first day of the first complete pay period in fiscal year ~~2004~~ 2006, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2003~~ 2005.

(d) Effective on the first day of the first complete pay period that includes ~~January 1, 2005~~ an employee's anniversary date during the fiscal year ending June 30, 2006, the base salary of each employee must be increased by ~~an amount equal to 25 cents an hour or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f) 3.5% or \$1,005, based upon 2,080 annual hours in a pay status, whichever is greater.~~ Effective on the first day of the first complete pay period that includes an employee's anniversary date during the fiscal year ending June 30, 2007, the base salary of each employee must be increased by 4% or \$1,188, based upon 2,080 annual hours in a pay status, whichever is greater. For employees hired on or before September 30, 2005, the anniversary date is October 1.

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.~~

(2) The pay schedule provided in 2-18-312 and the provisions of subsections (1)(a) through (1)(d) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in ~~2-18-313 and 2-18-315~~ employees who are members of collective bargaining units that have collectively bargained to participate in a separate or alternative classification and pay plan or who are covered under subsections (5) and (6) of this section.

~~(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:~~

~~(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2004 and 2005.~~

~~(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.~~

~~(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of~~

~~public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.~~

~~(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 2004, and June 30, 2005, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.~~

~~(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.~~

~~(4)(3) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement.~~

~~(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.~~

~~(iii)(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i) (3)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.~~

~~(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.~~

~~(5)(4) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.~~

~~(6)(5) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.~~

~~(7)(6) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.~~

~~(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.~~

~~(8)(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.~~

~~(8)~~(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.

(9) (a) *Montana highway patrol officer base salaries and biennial salary increases must be established through an alternative pay and classification plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary and any biennial salary increase for existing and entry-level highway patrol officer positions. The county sheriff departments in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary and biennial salary increases for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.*

(b) *To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.*

(c) *The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.*

(d) (i) *Except as provided in subsection (9)(d)(ii), the survey and plan must be completed at least 6 months before the start of each regular legislative session.*

(ii) *The first survey must be completed by January 1, 2006, for the plan to be implemented for the first full pay period in fiscal year 2007."*

Section 8. Coordination instruction. If [this act] and House Bill No. 447 are both passed and approved, then [section 6] of House Bill No. 447 must be amended as follows:

"Section 6. Appropriation. (1) The following money for the indicated fiscal years is appropriated to the listed agencies, from the designated state fund, to implement the adjustments provided for in 2-18-303:

	Fiscal Year 2006			
	General Fund	State Special	Federal Special	Proprietary
Legislative Branch	\$209,282	\$18,179	\$0	\$0
Consumer Council	0	11,734	0	0
Judicial Branch	599,262	23,565	2,033	0
Executive Branch	5,613,599	5,553,930	3,644,273	138,263

University System				
	3,820,187	0	125,024	0
Total	\$10,242,330	\$5,607,408	\$3,771,330	\$138,263
Fiscal Year 2007				
	General Fund	State Special	Federal Special	Proprietary
Legislative Branch				
	\$538,330	\$46,934	\$0	\$0
Consumer Council				
	0	30,024	0	0
Judicial Branch				
	1,547,500	59,996	5,282	0
Executive Branch				
	14,700,424	14,466,134	9,491,019	361,653
		<i>14,166,823</i>		
University System				
	9,007,001	0	293,720	0
Total	\$25,793,255	\$14,603,088	\$9,790,021	\$361,653
		<i>\$14,303,777</i>		

(2) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

Fiscal Year 2006				
	General Fund	State Special	Federal Special	Proprietary
Personal Services Contingency				
	\$1,500,000	\$2,400,000	\$500,000	\$100,000

(3) The following money is appropriated for the biennium to the department of administration for a labor-management training initiative:

Fiscal Year 2006		
	General Fund	Other Funds
Labor-Management Training Initiative		
	\$ 75,000	

Section 9. Coordination instruction. If both Senate Bill No. 285 and [this act] are passed and approved, then subsection (12) of 61-3-321 in [this act] must read as follows:

“(12) For each vehicle subject to a registration fee under subsection (1), except snowmobiles, watercraft, and pole trailers, an additional fee of \$5 must be collected and forwarded to the department of revenue. The department of revenue shall deposit the \$5 in the account established in [section 4].”

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 through 4] are effective January 1, 2006.

Approved April 26, 2005

CHAPTER NO. 422

[SB 308]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INFORM A PARENT OR OTHER PERSON RESPONSIBLE FOR A CHILD'S WELFARE OF THE RIGHT TO HAVE A SUPPORT PERSON PRESENT DURING AN IN-PERSON MEETING WITH A SOCIAL WORKER CONCERNING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-301 AND 41-3-427, MCA.

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. ~~The~~ *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) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement 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.

(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) 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) 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.”

Approved April 26, 2005

CHAPTER NO. 423

[SB 426]

AN ACT GENERALLY REVISING LAWS PERTAINING TO CONFIDENTIALITY AND INFORMATION SHARING OF YOUTH COURT RECORDS TO PROTECT YOUTH; DEFINING FORMAL AND INFORMAL YOUTH COURT RECORDS; PROVIDING FOR ELECTRONIC TRANSFER OF INFORMATION BETWEEN YOUTH COURTS AND THE DEPARTMENT

OF CORRECTIONS; REQUIRING THAT APPROPRIATE CONTROL METHODS BE USED BY THE YOUTH COURT AND THE DEPARTMENT OF CORRECTIONS TO ENSURE ADEQUATE INTEGRITY, SECURITY, AND CONFIDENTIALITY OF ANY ELECTRONIC RECORDS; REQUIRING YOUTH COURT INFORMATION TO BE MAINTAINED SEPARATELY FROM ADULT RECORDS; PROVIDING A PENALTY FOR UNAUTHORIZED DISCLOSURE OF OR ACCESS TO RECORDS; AND AMENDING SECTIONS 41-5-103, 41-5-215, 41-5-216, 41-5-1524, AND 41-5-2510, MCA.

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

Section 1. Section 41-5-103, MCA, is amended to read:

“41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

- (1) “Adult” means an individual who is 18 years of age or older.
- (2) “Agency” means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
- (3) “Assessment officer” means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
- (4) “Commit” means to transfer legal custody of a youth to the department or to the youth court.
- (5) “Correctional facility” means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.
- (6) “Cost containment funds” means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.
- (7) “Cost containment review panel” means the panel established in 41-5-131.
- (8) “Court”, when used without further qualification, means the youth court of the district court.
- (9) “Criminally convicted youth” means a youth who has been convicted in a district court pursuant to 41-5-206.
- (10) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.
- (11) “Delinquent youth” means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:
 - (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
 - (b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.
- (12) “Department” means the department of corrections provided for in 2-15-2301.
- (13) (a) “Department records” means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system *or information maintained by the youth court through the office of the court administrator.*

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) *"Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.*

(b) *The term does not include information provided by the youth court to the department of public health and human services' management information system.*

~~(19)~~(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(20)~~(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

~~(21)~~(22) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

~~(22)~~(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) *“Informal youth court records” means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.*

(b) *The term does not include information provided by the youth court to the department of public health and human services’ management information system.*

~~(23)~~(25) (a) *“Jail” means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest. ~~but~~*

(b) *The term does not include a ~~collocated~~ colocated juvenile detention facility that complies with 28 CFR, part 31.*

~~(24)~~(26) *“Judge”, when used without further qualification, means the judge of the youth court.*

~~(25)~~(27) *“Juvenile home arrest officer” means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.*

~~(26)~~(28) *“Law enforcement records” means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.*

~~(27)~~(29) (a) *“Legal custody” means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:*

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) *An individual granted legal custody of a youth shall personally exercise the individual’s rights and duties as guardian unless otherwise authorized by the court entering the order.*

~~(28)~~(30) *“Necessary parties” includes the youth and the youth’s parents, guardian, custodian, or spouse.*

~~(29)~~(31) (a) *“Out-of-home placement” means placement of a youth in a program, facility, or home, other than a custodial parent’s home, for purposes other than preadjudicatory detention.*

(b) *The term does not include shelter care or emergency placement of less than 45 days.*

~~(30)~~(32) (a) *“Parent” means the natural or adoptive parent. ~~but~~*

(b) *The term does not include:*

(i) *a person whose parental rights have been judicially terminated; ~~nor or does it include~~*

(ii) *the putative father of an illegitimate youth unless the putative father’s paternity is established by an adjudication or by other clear and convincing proof.*

~~(31)~~(33) "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(32)~~(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(33)~~(35) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(34)~~(36) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(35)~~(37) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(36)~~(38) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(37)~~(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(38)~~(40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

~~(39)~~(41) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(40)~~(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

~~(41)~~(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(42)~~(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection ~~(42)(a)~~ (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(43)~~(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(44)~~(46) “Youth assessment” means a multidisciplinary assessment of a youth as provided in 41-5-1203.

~~(45)~~(47) “Youth assessment center” means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth’s family in addressing the youth’s behavior.

~~(46)~~(48) “Youth care facility” has the meaning provided in 52-2-602.

~~(47)~~(49) “Youth court” means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

~~(48) “Youth court records” means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services’ management information system.~~

~~(49)~~(50) “Youth detention facility” means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a ~~collocated~~ *colocated* secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(50)~~(51) “Youth in need of intervention” means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth’s parents, foster parents, physical custodian, or guardian despite the attempt of the youth’s parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth’s behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.”

Section 2. Section 41-5-215, MCA, is amended to read:

“41-5-215. Youth court and department records — notification of school. (1) ~~Reports~~ *Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.*

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);
- (h) members of a local interagency staffing group provided for in 52-2-203;
- (i) persons allowed access to the reports referred to under 45-5-624(7); and
- (j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

- (i) the youth has admitted the allegation or a petition has been filed with the youth court; and
- (ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(d) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

~~(5) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. The administrative officials may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.~~

~~(6)~~(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

~~(7)~~(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.”

Section 3. Section 41-5-216, MCA, is amended to read:

“41-5-216. Disposition of youth court, law enforcement, and department records. (1) ~~Youth~~ *Formal youth* court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed ~~3 years after supervision for an offense ends on the youth's 18th birthday.~~ In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to *medical records*, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, or reports referred to in 45-5-624(7).

(5) After *formal* youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When *formal* youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services *and by the department* relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services *and the department* shall disassociate the offense and disposition information from the name of the

youth in the *respective* management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services *or by the department* and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) *Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may only be inspected pursuant to subsection (5).*

(b) *The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.*

(c) *Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was only involved in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:*

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) *Nothing in this section prohibits the intraagency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2).*

(9) *Nothing in this section prohibits the intraagency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."*

Section 4. Electronic records — youth records to be separate — formal policies and administrative rules required. (1) (a) The department and the youth court are required to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth generated or maintained in any management information system.

(b) The office of the court administrator shall adopt formal policies, and the department shall adopt administrative rules to institute the requirements in subsection (1)(a).

(2) For the purposes of this part, any references to "sealing", "physically sealed", and "destroyed" must be interpreted to have the same meaning when

applied to electronic records and must be applied to have the same force and effect. A sealed record must be made unavailable for access by any person unless upon court order as provided in 41-5-216. A destroyed record must be rendered inaccessible and unrecoverable and disposed of in a manner in which confidentiality is protected, which may include disassociating the offense and disposition information from the name of the youth.

(3) After [the effective date of this act], any management information system that is developed and that contains formal or informal youth court records or department records must be maintained separately from any adult offender management information system in the criminal justice or corrections system.

Section 5. Penalty for unauthorized disclosure of or access to records. A person who discloses or accesses a formal youth court record, an informal youth court record, or a department record in violation of 41-5-215 or 41-5-216 is guilty of a misdemeanor and shall be fined \$500.

Section 6. Section 41-5-1524, MCA, is amended to read:

“41-5-1524. Commitment to department — transfer of records. (1) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of *formal and informal youth court records, including* medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(2) *The youth court may share informal youth court records with the department when a youth has been committed to the department of corrections for custody. On the youth’s 18th birthday or upon discharge, whichever is earlier, the department shall seal the entire record and is subject to 41-5-216(5).*

(3) *The department shall maintain the records of a youth committed to the department in a separate management information system and may not include any youth records in an adult offender management information system unless the youth has been adjudicated under 41-5-206.”*

Section 7. Section 41-5-2510, MCA, is amended to read:

“41-5-2510. Sentence review hearing. (1) When a youth has been convicted as an adult pursuant to the provisions of 41-5-206, except for offenses punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the county attorney, defense attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall notify the court of the youth’s impending birthday no later than 90 days before the youth’s 21st birthday.

(2) After reviewing the status report and upon motion for a hearing, the court shall determine whether to hold a criminally convicted youth sentence review hearing. If the court, in its discretion, determines that a sentence review hearing is warranted or is required under 41-5-2503, the hearing must be held within 90 days after the filing of the request or determination. The sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

(3) The sentencing court shall review the department’s records, *formal* youth court records, victim statements, and any other pertinent information.

(4) The sentencing court, after considering the criminal, social, psychological, and any other records of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or parents or

guardian of the youth and any other advocates for the youth shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

(5) In the event that the sentencing court determines that the youth has been substantially rehabilitated, the court shall determine whether to:

(a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless otherwise specified;

(b) impose all or part of the remaining sentence and make any additional recommendations to the department regarding the placement and treatment of the criminally convicted youth; or

(c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the total sentence remaining.

(6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant to 46-18-203.”

Section 8. Codification instruction. [Sections 4 and 5] are intended to be codified as an integral part of Title 41, chapter 5, part 2, and the provisions of Title 41, chapter 5, part 2, apply to [sections 4 and 5].

Approved April 26, 2005

CHAPTER NO. 424

[SB 186]

AN ACT ALLOWING NONMONETARY, LOW-VALUE PRIZE CONTESTS BASED ON THE SIZE OF GAME ANIMALS TAKEN BY HUNTERS; AMENDING SECTION 87-3-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-3-307, MCA, is amended to read:

“87-3-307. Contests based on size of game animals unlawful. (1) Except as provided in this section, it is unlawful for any person, as defined in 87-2-101, to conduct or sponsor in any manner a contest in which a *any monetary prize or any prize certificate or award in excess of \$50* is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, or having the longest body; or any similar contest based upon the size or weight of a game animal or part of a game animal.

(2) This section does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute.”

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

Approved April 26, 2005

CHAPTER NO. 425

[SB 489]

AN ACT AUTHORIZING THE USE OF THE ORPHAN SHARE FUND FOR EVALUATING THE EXTENT OF CONTAMINATION AND FORMULATING

REMEDICATION ALTERNATIVES FOR RELEASES AT CERTAIN FACILITIES UNDER THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 75-10-621, MCA, is amended to read:

“75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(b) to the extent funds are available after the appropriations in subsection (3)(a), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(b), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the

purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Except as provided in subsection (6), unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.

(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to ~~75-10-743(10)~~ 75-10-743(9).

(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."

Section 2. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for

indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.

(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to ~~75-10-743(10)~~ 75-10-743(9)."

Section 3. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, except as provided in ~~subsection (10)~~ subsections (9) and (10), to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(e) unencumbered funds remaining in the abandoned mines state special revenue account;

(f) interest income on the account;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection ~~(8)~~ (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

~~(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.~~

~~(8)~~(7) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

~~(9)~~(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

~~(4)~~(9) For the biennium beginning July 1, 2003, and subject to the provisions of section 4, Chapter 199, Laws of 2003, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.

(10) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (10)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(c) The department shall consult with the noticed potentially liable persons regarding contractor selection and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.

(d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection (10)(a), for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives and for development and assessment of remediation alternatives.

(e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection (10)(a) must meet the following schedule:

(i) Contracts for investigations and studies must be in place by August 31, 2005.

(ii) A summary of existing data must be prepared by December 31, 2005.

(iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.

(iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection (10)(g).

(v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.

(vi) The contractor shall submit final remediation alternatives by July 31, 2007.

(f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007, regarding the progress

being made to meet the requirements of subsection (10)(e). The report must include information on expenditures.

(g) If investigations completed under subsection (10) indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.

(h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection (10)(d)."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 26, 2005

CHAPTER NO. 426

[HB 46]

AN ACT CREATING THE OFFENSE OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE; PROVIDING THAT ON THE FIRST THROUGH THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION, IF THE PERSON HAS A PRIOR CONVICTION OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, THE PERSON SHALL BE PUNISHED AS PROVIDED IN 61-8-731 FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Vehicular homicide while under influence. (1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being while the person is operating a vehicle in violation of 61-8-401 or 61-8-406.

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition of a sentence may not be deferred.

Section 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 violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than \$300 or more than \$1,000. The initial 24 hours of the imprisonment term must be served in the county jail 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) ~~On~~ *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. At least 48 hours of the imprisonment term must be served consecutively in the county jail 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) ~~On~~ *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. At least 48 hours of the imprisonment term must be served consecutively in the county jail 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 [section 1], 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) ~~A~~ *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 and shall be punished by a fine of not less than \$300 or more than \$1,000.*

(2) ~~On~~ *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 and by a fine of not less than \$600 or more than \$1,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.*

(3) ~~On~~ *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 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000. 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 [section 1], 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 45, chapter 5, part 1, and the provisions of Title 45 apply to [section 1].

Section 5. Coordination instruction. If both House Bill No. 97 and [this act] are passed and approved, then 61-8-731 must be amended as follows:

“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) ~~On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for~~ *Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has either a single conviction under [section 1 of House Bill No. 46] or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:*

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under [section 1 of House Bill No. 46] or any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

~~(3)~~(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person’s probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(4)~~(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

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

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

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

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

(f) any combination of the restrictions or conditions listed in subsections ~~(4)(a)~~ (5)(a) through ~~(4)(e)~~ (5)(e).

~~(5)~~(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

~~(6)~~(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section.”

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 427

[HB 179]

AN ACT REQUIRING THE SMALL BUSINESS LICENSING COORDINATION CENTER TO INFORM EACH BUSINESS ENTERPRISE APPLYING FOR A BUSINESS LICENSE THAT THE BUSINESS ENTERPRISE IS REQUIRED TO OBTAIN A BUSINESS NAME FROM THE SECRETARY OF STATE BEFORE ANY OTHER STATE LICENSE APPLICATION MAY BE PROCESSED; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PARTICIPATE IN THE MONTANA SMALL BUSINESS LICENSING COORDINATION PROGRAM AND ON THE BOARD OF REVIEW; AND AMENDING SECTIONS 30-16-201, 30-16-302, AND 30-16-303, MCA.

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

Section 1. Section 30-16-201, MCA, is amended to read:

“30-16-201. Designation of small business licensing coordination center — duties of center. The department shall administer a small business licensing coordination center. The small business licensing coordination center shall:

- (1) document and analyze current licensing requirements, fees, and procedures;
- (2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;
- (3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;
- (4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;
- (5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;
- (6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements; *The assistance required by this subsection includes a specific obligation for the center to immediately inform each business enterprise applying for a license that the business enterprise is required to obtain a business name from the secretary of state pursuant to Title 35 before any other state license application may be processed.*
- (7) maintain a supply of license and permit forms or applications for all licenses and actively assist the business community in answering application questions;
- (8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;
- (9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;
- (10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;
- (11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process; and
- (12) perform other administrative tasks delegated to the center to improve state business license administration.”

Section 2. Section 30-16-302, MCA, is amended to read:

“30-16-302. Board of review. (1) There is a board of review. The board of review’s duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, labor and industry, environmental quality, livestock, revenue, justice, and public health and human services, ~~the secretary of state~~, a member appointed by the president of the senate, and a member appointed by the speaker of the house. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency’s director must be appointed to the board of review by the governor.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; and

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.

(5) The board of review is attached to the department of revenue for administrative purposes only as provided in 2-15-121.”

Section 3. Section 30-16-303, MCA, is amended to read:

“30-16-303. Participation of state agencies. (1) The legislature directs full participation in the implementation of this chapter by:

(a) the departments of agriculture, environmental quality, revenue, justice, labor and industry, and public health and human services;

~~(b) the secretary of state;~~

~~(c)~~(b) the public service commission; and

~~(d)~~(c) other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

(a) the agency administering the license requests that the license be included in the plan;

(b) the board of review approves including the license by a majority vote of a quorum of the board of review; and

(c) licensees affected by the license’s inclusion in the plan are given 60 days’ notice of the plan’s implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

(a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan’s criteria;

(b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan’s implementation; and

(c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) (a) In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies in an amount equal to no more than one-half of the total cost of processing and issuing a license.

(b) The amount remaining of the total cost of processing and issuing a license may be charged to the license applicant.

(c) The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued under the streamlined registration and licensing plan.”

Approved April 28, 2005

CHAPTER NO. 428

[HB 192]

AN ACT REVISING LAWS GOVERNING COMMERCIAL DRIVER'S LICENSES TO COMPLY WITH REGULATIONS ISSUED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION AND THE TRANSPORTATION SECURITY ADMINISTRATION OF THE DEPARTMENT OF HOMELAND SECURITY; PROHIBITING THE DEPARTMENT OF JUSTICE FROM ISSUING, TRANSFERRING, OR RENEWING A HAZARDOUS MATERIALS ENDORSEMENT UNLESS CERTAIN CONDITIONS ARE MET; REQUIRING A SEPARATE APPLICATION AND FINGERPRINT-BASED BACKGROUND CHECK FOR A HAZARDOUS MATERIALS ENDORSEMENT; REQUIRING REVOCATION OR REMOVAL OF A PERSON'S HAZARDOUS MATERIALS ENDORSEMENT TO A COMMERCIAL DRIVER'S LICENSE UNDER CERTAIN CIRCUMSTANCES; REQUIRING A PERSON WHOSE HAZARDOUS MATERIALS ENDORSEMENT IS REVOKED TO SURRENDER THE PERSON'S COMMERCIAL DRIVER'S LICENSE AND OBTAIN A REPLACEMENT LICENSE WITHOUT THE ENDORSEMENT; REQUIRING THE DEPARTMENT TO KEEP RECORDS OF REVOCATIONS AND DISQUALIFICATIONS; PROHIBITING AN EMPLOYER FROM PERMITTING THE OPERATION OF A COMMERCIAL MOTOR VEHICLE IN VIOLATION OF STATE LAW OR FEDERAL REGULATION AND PROVIDING PENALTIES; SPECIFYING WHEN SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE OR DISQUALIFICATION COMMENCES; REQUIRING THE DEPARTMENT TO NOTIFY OTHER STATES OF TRAFFIC VIOLATIONS; SPECIFYING THAT A VEHICLE USED FOR MILITARY PURPOSES IS NOT A COMMERCIAL MOTOR VEHICLE; REVISING THE DEFINITION OF "HAZARDOUS MATERIALS"; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY ISSUE A COMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; PROHIBITING THE DEPARTMENT FROM ISSUING A NONCOMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY RENEW A DRIVER'S LICENSE BY MAIL; PROVIDING SEPARATE EXPIRATION PROVISIONS FOR COMMERCIAL DRIVER'S LICENSES; REVISING THE PENALTIES FOR OPERATION OF AN OUT-OF-SERVICE VEHICLE; REQUIRING THAT CERTAIN VIOLATIONS APPEAR ON THE DRIVING RECORD OF A PERSON WHO HOLDS A COMMERCIAL DRIVER'S LICENSE; AMENDING SECTIONS 15-1-501, 19-6-401, 19-6-404, 44-1-1005, 61-1-134, 61-1-137, 61-1-505, 61-5-103, 61-5-104, 61-5-105, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-114, 61-5-119, 61-5-121, 61-5-125, 61-5-201, 61-5-213, 61-8-725, 61-8-802, 61-8-803, 61-8-807, 61-8-812, 61-11-101, 61-11-102, AND 61-11-203, MCA; REPEALING SECTIONS 61-8-809, 61-8-810, AND 61-8-811, MCA; AND

PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Limitations on issuance of hazardous materials endorsement to commercial driver's license — security threat assessment. (1) The department may not issue, transfer, or renew a hazardous materials endorsement for a person who holds a commercial driver's license unless it receives notice from the transportation security administration of the department of homeland security that:

- (a) the person does not pose a security threat warranting denial of a hazardous materials endorsement;
- (b) the person has been granted a waiver from the transportation security administration; or
- (c) less than 4 years have elapsed since a favorable security threat assessment was performed in a former licensing jurisdiction.

(2) In addition to any requirements under this chapter and in accordance with the security threat assessment standards provided in 49 CFR, part 1572, an applicant who is seeking a hazardous materials endorsement shall:

- (a) complete a separate application as prescribed by the transportation security administration;
- (b) submit, as directed by the department, to a fingerprint-based background check by the transportation security administration; and
- (c) pay to the agent of the transportation security administration the fees imposed under 49 CFR, part 1572, for collection and transmission of fingerprints and applicant information, processing of fingerprint identification records, and the security threat assessment and adjudication.

Section 2. Authority to revoke or remove hazardous materials endorsement. (1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements.

(2) A person whose hazardous materials endorsement has been revoked or removed under this section shall surrender the person's commercial driver's license to the department and apply for a replacement license, as provided in 61-5-114, that does not include the hazardous materials endorsement.

(3) Upon surrender of a hazardous materials endorsement by a person who is disqualified from holding a hazardous materials endorsement under 49 CFR, part 1572, the department shall note the removal of the hazardous materials endorsement on its records and on the commercial driver's license information system.

Section 3. Employer not to permit operation of commercial motor vehicle in violation of state law or federal regulation — criminal and civil penalties. (1) An employer may not knowingly allow, require, permit, or authorize a person to operate a commercial motor vehicle in the United States:

(a) during any period in which the person's commercial driver's license has been suspended, revoked, or canceled by a state, the person has lost the privilege to operate a commercial motor vehicle in a state, or the person has been disqualified from operating a commercial motor vehicle;

(b) during any period in which the person has more than one commercial driver's license;

(c) during any period in which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is subject to an out-of-service order; or

(d) in violation of a federal, state, or local law or regulation pertaining to railroad crossings.

(2) A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) (a) Except as provided in subsection (3)(b), an employer who violates this section is subject to a civil penalty of not less than \$2,750 or more than \$11,000.

(b) An employer who violates subsection (1)(d) is subject to a civil penalty of not more than \$10,000.

(c) The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the violation occurred or in the first judicial district.

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

Section 4. Commencement of commercial driver's license suspension or disqualification. A suspension or disqualification under this part commences either from the date of receipt by the department of a report of conviction from a court or another licensing jurisdiction or the day following the completion of a previously imposed period of suspension or disqualification, whichever occurs later.

Section 5. Notification to other states of traffic violations. The department, upon receipt of a report of a conviction or a violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, by a person who holds a commercial driver's license from another state or who is licensed in another state, shall report the conviction to the licensing entity in the state where the driver is licensed as follows:

(1) beginning September 30, 2005, within 30 days of conviction; and

(2) beginning September 30, 2008, within 10 days of conviction.

Section 6. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) Except as provided in subsection (5), the state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes distributed to the general fund under 15-36-331;

(d) electrical energy producer's license taxes under chapter 51;

(e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and ~~duplicate~~ *replacement* driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department."

Section 7. Section 19-6-401, MCA, is amended to read:

"19-6-401. Payments into pension trust fund. All appropriations made by the state, all contributions by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion of the fees from driver's licenses and ~~duplicate~~ *replacement* driver's licenses as provided in 61-5-121 must be deposited in the pension trust fund."

Section 8. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution. The state of Montana shall annually contribute to the pension trust fund an amount equal to 36.33% of the total compensation paid to the members from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and ~~duplicate~~ *replacement* driver's licenses as provided in 61-5-121."

Section 9. Section 44-1-1005, MCA, is amended to read:

“44-1-1005. Motor carriers safety — enforcement — violations. (1) The department of justice shall adopt, by rule, standards for safety of operations of:

- (a) any for-hire motor carrier or any private motor carrier;
- (b) any motor vehicle or vehicle combination used in interstate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more;
- (c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;
- (d) any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and is not used to transport passengers for compensation;
- (e) any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or
- (f) any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.

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

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to this section. Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to this section is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. This section does not prohibit the inspection of a motor vehicle, as provided for by this section, at a safe location on a public road.

(4) The department shall cooperate with the department of transportation to ensure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapters 5 and 9, and any standards adopted pursuant to this section. Each employee designated as a peace officer may:

- (a) issue citations and make arrests;
- (b) issue summonses;
- (c) accept bail;
- (d) serve warrants of arrest;
- (e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of commercial motor vehicles.

(6) Violations of the standards adopted pursuant to this section are punishable as provided in 61-9-512, and the court, upon conviction, ~~or forfeiture of bail that is not vacated as defined in 61-5-213~~, shall forward a record of conviction ~~or forfeiture~~ to the department within 5 days in accordance with 61-11-101.

(7) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5."

Section 10. Section 61-1-134, MCA, is amended to read:

"61-1-134. Commercial motor vehicle defined — exceptions. (1)

Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(a) 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;

(b) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(c) is designed to transport at least 16 passengers, including the driver;

(d) is a school bus ~~as defined in 20-10-101~~; or

(e) is of any size and is used ~~to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations in the transportation of hazardous materials as defined in 61-1-137.~~

(2) The following vehicles are not commercial motor vehicles:

(a) an authorized emergency service vehicle:

(i) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(ii) entitled to the exemptions granted under 61-8-107; ~~or~~

(b) a vehicle:

(i) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(ii) 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

(iii) not used to transport goods for compensation or hire; *or*

(c) *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.*

(3) For purposes of this section:

(a) "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;

(b) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle; ~~and~~

(c) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; *and*

(d) "school bus" has the meaning provided in 49 CFR 383.5."

Section 11. Section 61-1-137, MCA, is amended to read:

"61-1-137. Hazardous material materials. "Hazardous material materials" means: ~~a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported~~

(1) *any materials that have been designated as hazardous under 49 U.S.C. 5103 and are required to be placarded under 49 CFR, part 172, subpart F; or*

(2) *any quantity of materials listed as select agents or toxins in 42 CFR, part 73."*

Section 12. Section 61-1-505, MCA, is amended to read:

"61-1-505. Cancellation. "Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to ~~such the license,~~ *but Except as provided in 61-5-201(3),* the cancellation of a license is without prejudice and application for a new license may be made at any time after ~~such the cancellation."~~

Section 13. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. (1) A person who has resided in Montana for more than 120 consecutive days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who ~~operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if the person has resided in Montana for more than 30 consecutive days:~~

(a) *is considered to be a resident for the purpose of being licensed to operate a commercial motor vehicle; and*

(b) *must be licensed under the laws of Montana before operating any commercial motor vehicle.*

(3) *The department may issue a commercial driver's license to a person who is not a resident of Montana or domiciled in Montana only if:*

(a) *the person is domiciled in a foreign country with commercial driver license standards, as determined by the federal motor carrier safety administration of the department of transportation, that are not similar to the testing and licensing standards provided in 49 CFR, part 383, subparts F, G, and H; or*

(b) *the person is domiciled in a state that is prohibited by the federal motor carrier safety administration from issuing commercial driver's licenses under 49 CFR 384.405."*

Section 14. Section 61-5-104, MCA, is amended to read:

“61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle, as defined in 23-2-801, on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving 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 issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) (a) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(b) *For the purpose of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a province or territory of Canada, or the federal district of Mexico.*

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

Section 15. 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, ~~or~~ 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 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; ~~or~~

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway; *or*

(9) *who is not a resident of or domiciled in Montana except as provided in 61-5-103(3).*"

Section 16. Section 61-5-107, MCA, is amended to read:

“61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver’s license, commercial driver’s license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver’s license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant’s social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, *cancellation*, disqualification, or withdrawal of a previously issued driver’s license or any driving privileges in another jurisdiction and that the applicant does not have a driver’s license from another jurisdiction;

(c) a brief description of any 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

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant’s social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant’s driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver’s record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver’s license under state law. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 17. Section 61-5-110, MCA, is amended to read:

“61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs. (1) Prior to examining an applicant for a driver’s license, the department shall conduct a check of the applicant’s driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver’s license information system, established under 49 U.S.C. 31309.

(2) (a) The department shall examine each applicant for a driver’s license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant’s eyesight, a knowledge test examining the applicant’s ability to read and understand highway signs and the applicant’s knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant’s ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, quadricycle, or motorcycle. *The road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.*

(b) The knowledge test, ~~or~~ road test, or ~~both,~~ *skills test* may be waived by the department upon certification of the applicant’s successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3) *or by a certified third-party commercial driver testing program as provided in 61-5-118.*

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests *or skills test* required by the department to students participating in the district’s high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver’s license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver’s license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver’s license by the department.

(b) The department may require an applicant who surrenders a valid driver’s license issued by another jurisdiction to submit to a knowledge and *road or skills test* if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant’s ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

Section 18. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses 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.

(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, 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) ~~A~~ *Except as provided in subsection (3)(d)(v), 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.*

(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 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) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(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.*

(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. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b), ~~and~~ (4)(c), *and* (4)(d), 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.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) ~~Fees for driver's licenses are~~ (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:

~~(a)(i)~~ driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

~~(b)(ii)~~ motorcycle endorsement — 50 cents a year or fraction of a year;

~~(c)(iii)~~ commercial driver's license:

~~(i)(A)~~ interstate — ~~\$5~~ \$10 a year or fraction of a year; or

~~(ii)(B)~~ intrastate — ~~\$3.50~~ \$8.50 a year or fraction of a year.;

~~(d) renewal notice —~~

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 19. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the *licensing standards and requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;*

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older ~~or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older;~~

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license as provided in 61-1-134(2)."

Section 20. Section 61-5-114, MCA, is amended to read:

"61-5-114. Duplicate Replacement licenses. (1) If an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom it was issued may, upon the payment of a fee of \$10, obtain a ~~duplicate or substitute~~ replacement permit or license, upon furnishing proof satisfactory to the department that the permit or license has been lost or destroyed.

(2) *If the hazardous materials endorsement on a commercial driver's license issued under the provisions of this chapter is revoked or removed pursuant to the authority provided in [section 2], the person to whom the license was issued shall surrender to the department the person's commercial driver's license with the hazardous materials endorsement and may obtain, upon making application and paying a \$10 fee, a replacement license that does not include a hazardous materials endorsement.*"

Section 21. Section 61-5-119, MCA, is amended to read:

"61-5-119. Definitions Driver rehabilitation specialist — definition.

(1) For the purposes of 61-5-120, "driver rehabilitation specialist" means a person who:

(a) (1) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or

(b) (i) (2) (a) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, vehicle modification prescription, and driver education;

(ii) (A) (b) (i) possesses a bachelor's degree in rehabilitation, education, or health and safety; in physical, occupational, or recreational therapy; or in a related profession; or

(B) (ii) has an equivalent of 8 years of experience in driver rehabilitation and education; and

(iii) (c) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) For the purposes of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada."

Section 22. Section 61-5-121, MCA, is amended to read:

“61-5-121. Disposition of fees. (1) ~~The~~ *Except as provided in subsection (3), the* disposition of the fees from driver’s licenses, motorcycle endorsements, commercial driver’s licenses, and ~~duplicate replacement~~ driver’s licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver’s license fee, *18.25% of each commercial driver’s license fee*, and 25% of each ~~duplicate replacement~~ driver’s license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers’ retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver’s license fee, *2.5% of each commercial driver’s license fee*, and 3.75% of each ~~duplicate replacement~~ driver’s license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver’s license fee, *16.94% of each commercial driver’s license fee*, and 8.75% of each ~~duplicate replacement~~ driver’s license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.5% of each driver’s license fee, *62.31% of each commercial driver’s license fee*, and 62.5% of each ~~duplicate replacement~~ driver’s license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver’s license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver’s licenses, commercial driver’s licenses, motorcycle endorsements, and ~~duplicate replacement~~ driver’s licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate~~ replacement driver's licenses are collected by the department, it shall remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

(3) *The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund.*"

Section 23. Section 61-5-125, MCA, is amended to read:

"61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

- (a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;
- (b) issuance of a hardship license to an underage applicant;
- (c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;
- (d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;
- (e) restrictions to be imposed upon a probationary license;
- (f) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty; and
- (g) issuance of a ~~duplicate~~ *replacement* driver's license."

Section 24. Section 61-5-201, MCA, is amended to read:

"61-5-201. Authority of department to cancel license. (1) The department may cancel a driver's license ~~upon determining if it has reasonable grounds to believe that:~~

- (a) the licensee was not entitled to the issuance; ~~or that~~
- (b) since the issuance, the licensee has become ineligible as determined pursuant to the provisions of 61-5-105; ~~or that~~
- (c) the licensee failed to give the required or correct information in the licensee's application or committed any fraud in making the application.

(2) Upon cancellation, the licensee shall surrender the canceled license to the department.

(3) *A person whose driver's license is canceled because the person failed to give the required or correct information on the application or committed any fraud in making the application is disqualified from operating a commercial motor vehicle for a period of 60 days from the date of the cancellation.*"

Section 25. Section 61-5-213, MCA, is amended to read:

"61-5-213. Conviction defined. For the purposes of parts 1 through 3 of this chapter, ~~part 8 of chapter 8, and 61-11-101 and 61-11-102 chapter 11, and as it relates to any state or local law regulating the operation of a motor vehicle on highways or mandating the revocation or suspension of a driver's license or driving privilege,~~ the term "conviction" shall mean a final conviction, ~~except that the department shall record a deferred imposition of sentence as a conviction if the underlying offense is a felony. Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction means:~~

- (1) *a plea of guilty or nolo contendere accepted by the court;*
- (2) *an adjudication of guilt that has not been vacated by the appropriate court;*
- (3) *a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal;*
- (4) *a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated;*

(5) *the payment of a fine or court cost, regardless of whether it is suspended or rebated; or*

(6) *the violation of a condition of release without bail, regardless of whether the condition is imposed as part of probation.”*

Section 26. Section 61-8-725, MCA, is amended to read:

“61-8-725. Penalty for violation of speed limits — no record for certain violations. (1) A person violating the speed limit imposed pursuant to 61-8-303 shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
\$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and, *except as provided in subsection (4)*, may not be recorded or charged against a driver’s record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

- (a) 10 miles an hour during the daytime; or
- (b) 5 miles an hour during the nighttime.

(3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303.

(4) *The recordkeeping restrictions provided in subsection (2) with respect to a person’s driving record do not apply to a speed limit violation or conviction that was committed by:*

(a) *a Montana resident in another state whose violation or conviction was reported to the department by a court or the licensing authority in the state in which the violation occurred; or*

(b) *a person who holds a commercial driver’s license regardless of whether or not the violation occurred while the person was operating a commercial motor vehicle.”*

Section 27. Section 61-8-802, MCA, is amended to read:

“61-8-802. Suspension of commercial driver’s license — disqualification — major offenses. (1) Upon receipt of a report of a major offense committed by a person who holds a commercial driver’s license or a person required to have a commercial driver’s license, the department shall suspend the person’s commercial driver’s license *and disqualify the person from operating a commercial motor vehicle:*

(a) upon receipt of a report of a first major offense, for 1 year, except that if the major offense occurred while operating a commercial motor vehicle transporting placardable hazardous ~~material~~ *materials*, the suspension must be for 3 years; or

(b) upon receipt of a report of a second or subsequent major offense arising from an incident that is separate from the prior major offense, for life, subject to

department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years.

(2) For purposes of this section, the term "major offense" refers to a refusal to take a test under an implied consent law *in this or any other jurisdiction, a test result under an implied consent law in any other jurisdiction that shows an alcohol concentration of .08 or more while operating a noncommercial motor vehicle or an alcohol concentration of .04 or more while operating a commercial motor vehicle*, or a conviction ~~of or forfeiture of bail not vacated for~~ *in this or any other jurisdiction* of any of the following offenses:

(a) driving or being in actual physical control of a motor vehicle while under the influence of alcohol, a drug, or a combination of the two;

(b) driving or being in actual physical control of:

(i) a noncommercial motor vehicle and having an alcohol concentration of 0.08 or more; or

(ii) a commercial motor vehicle and having an alcohol concentration of 0.04 or more;

(c) leaving the scene of an accident involving death or personal injury or failing to give information and render aid;

(d) using a motor vehicle in the commission of a felony, other than a felony under 61-8-804;

(e) operating a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled or the person is disqualified from operating a commercial motor vehicle; or

(f) causing a fatality through negligent or criminal operation of a commercial motor vehicle."

Section 28. Section 61-8-803, MCA, is amended to read:

"61-8-803. Suspension of commercial driver's license — serious traffic violations. (1) If the department receives notice from a court or another licensing jurisdiction that a person holding or required to hold a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding in excess of 15 miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely;

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident;

(f) operating a commercial motor vehicle without a commercial driver's license;

(g) operating a commercial motor vehicle without a commercial driver's license in one's possession or refusing to display a commercial driver's license upon request; or

(h) operating a commercial motor vehicle without the proper class of commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported.

(3) *A person is considered to have committed a second or subsequent serious traffic violation if less than 3 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.*"

Section 29. Section 61-8-807, MCA, is amended to read:

"61-8-807. Administration of tests. ~~(1)~~ Tests required under this part must be administered as provided in 61-8-405.

~~(2) The department may authorize a private individual, institution, or corporation to administer required driving examinations that would otherwise be administered by the department if they have been officially trained and certified to conduct them by the department and the third party has entered into an agreement with the department that complies with the requirements of 49 CFR part 383.75."~~

Section 30. Section 61-8-812, MCA, is amended to read:

"61-8-812. Suspension of commercial driver's license — operation of out-of-service vehicle — criminal and civil penalties — suspension of commercial driver's license. (1) *A person may not operate a commercial motor vehicle during any period in which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is subject to an out-of-service order issued under state or federal authority.*

(2) *A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.*

(3) (a) *In addition to the misdemeanor penalties provided in subsection (2) and suspension of the person's commercial driver's license as provided in subsection (4), a person who violates an out-of-service order issued under state or federal authority is subject to a civil penalty of not less than \$1,100 or more than \$2,750.*

(b) *The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is the county in which the violation occurred or in the first judicial district.*

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

~~(4)~~(4) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of violating an out-of-service order, the department shall suspend the person's commercial driver's license for:

(a) 6 months for a first conviction;

(b) 1 year for a second conviction if the vehicle being operated by the person at the time of the violation was not transporting placardable hazardous

materials or was not designed or being used to transport more than 15 passengers, inclusive of the driver; and

(c) 3 years:

(i) for a second conviction if the vehicle:

(A) being operated at the time of the violation was transporting placardable hazardous materials; or

(B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

(ii) for a third or subsequent conviction.

~~(2)~~(5) For purposes of this section, an offender is considered to have been previously convicted if less than 10 years have elapsed between the commission of the present offense and a previous conviction.

~~(3)~~(6) A temporary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection ~~(4)~~(4)."

Section 31. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days *after the conviction becomes final*, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, *except for standing or parking statutes or ordinances*, shall forward a record of the conviction, *as defined in 61-5-213*, ~~or forfeiture~~ to the department within 5 days after ~~a the conviction or a forfeiture of bail that is not vacated, except for a conviction or a forfeiture of bail for a standing or parking statute or ordinance becomes final~~. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) *A conviction becomes final for the purposes of this part upon the later of:*

(a) *expiration of the time for appeal of the court's judgment or sentence to the next highest court;*

(b) *forfeiture of bail that is not vacated; or*

(c) *imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.*

(5) *A court may not take any action, including deferring imposition of judgment, on a conviction that would prevent a conviction for any violation of a*

state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record."

Section 32. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by the department. (1) The department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each the reasons for denial;

(b) all applications granted; and

(c) the name of each licensee whose license has been suspended or revoked by the department and after each name the reasons for the action.

(2) (a) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state. The department shall maintain records in a manner that allows an individual record of each licensee, showing the convictions of the licensee and certain traffic accidents in which the licensee has been involved. The records must be readily ascertainable and available for the consideration of the department upon any application for renewal of a license and at other suitable times. A record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(b) If the department receives notice that a licensee has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the licensee's record.

(c) *The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.*

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of the record to the motor vehicle administrator in the state in which the person is a resident.

(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. A photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.

(5) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

(6) A reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the following certification by a custodian of the record appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed: _____
(Print Full Name)"

Section 33. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) ~~"Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order. has the meaning provided in 61-5-213.~~

(2) "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:

(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 defined 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 (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) "License" means any type of license or permit to operate a motor vehicle.

(5) "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, as the term is defined in 61-1-201.

(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 34. Repealer. Sections 61-8-809, 61-8-810, and 61-8-811, MCA, are repealed.

Section 35. Codification instruction. (1) [Sections 1 and 2] are 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 [sections 1 and 2].

(2) [Sections 3 through 5] are intended to be codified as an integral part of Title 61, chapter 8, part 8, and the provisions of Title 61, chapter 8, part 8, apply to [sections 3 through 5].

Section 36. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall include the revisions to the definitions of "commercial motor vehicle" and "cancellation" in [this act] in the definition of those terms in Senate Bill No. 285, and the code commissioner shall change the reference to 61-1-137 in the definition of "commercial motor vehicle" to "61-8-801".

Section 37. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 2(1)] of House Bill No. 192 must be amended as follows:

"(1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials, *as defined in 61-8-801*, in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements."

Section 38. Coordination instruction. If Senate Bill No. 459 and [this act] are both passed and approved, then [section 8(7)] of Senate Bill No. 459 must be amended as follows:

"(7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction, ~~or forfeiture of bail that is not vacated~~ *as defined in 61-5-213*, shall forward a record of conviction ~~or forfeiture~~ to the department within 5 days in accordance with 61-11-101."

Section 39. 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 40. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2005.

(2) (a) [Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20 and this section] are effective on passage and approval.

(b) [Sections 18(6) and 22] are effective July 1, 2005.

Section 41. Retroactive applicability. [Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005.

Approved April 28, 2005

CHAPTER NO. 429

[HB 197]

AN ACT AMENDING THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; MAKING IT A FELONY TO PURPOSELY OR KNOWINGLY ABUSE, SEXUALLY ABUSE, OR NEGLECT AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; MAKING IT A MISDEMEANOR FOR A FIRST OFFENSE OF NEGLIGENTLY ABUSING AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; AND AMENDING SECTION 52-3-825, MCA.

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

Section 1. Section 52-3-825, MCA, is amended to read:

“52-3-825. Penalties. (1) ~~Any~~ A person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) (a) ~~An individual~~ A person who purposely or knowingly abuses, sexually abuses, or neglects an older person or a person with a developmental disability is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed \$10,000, or both.

(b) (i) A person who negligently abuses an older person or a person with a developmental disability is guilty of a misdemeanor and upon a first conviction ~~may~~ shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the ~~individual may~~ person is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and ~~may~~ be fined an amount not to exceed \$10,000, or both.

(c) *A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b).*

(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value shall be fined *an amount* not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 in value shall be fined *an amount* not more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved.”

Approved April 28, 2005

CHAPTER NO. 430

[HB 208]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, THROUGH ITS DIRECTOR, TO GRANT OR ACQUIRE RIGHTS-OF-WAY FOR CERTAIN PURPOSES WITHOUT THE APPROVAL OF THE FISH, WILDLIFE, AND PARKS COMMISSION; ALLOWING THE DEPARTMENT, WITH THE CONSENT OF THE COMMISSION, TO MAKE LIMITED PROPERTY BOUNDARY AND WATER RIGHTS ADJUSTMENTS WITH ADJACENT LANDOWNERS; AMENDING SECTIONS 87-1-209 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-209, MCA, is amended to read:

“87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries or nursery ponds;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and water rights for full market value to other governmental entities *or to adjacent landowners* without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity *or to an adjacent landowner* pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) *When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.*

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

~~(5)~~(6) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

~~(6)~~(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land.”

Section 2. 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.

(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) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) 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) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

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

Approved April 28, 2005

CHAPTER NO. 431

[HB 216]

AN ACT REVISING THE LAWS REGARDING THE CHILD SUPPORT ENFORCEMENT PROGRAM TO IMPROVE EFFICIENCY AND EFFECTIVENESS; CLARIFYING ACCESS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO A PARTY'S FINANCIAL AND EMPLOYMENT RECORDS; ALLOWING THE DEPARTMENT TO ESTABLISH A MEDICAL SUPPORT ORDER INDEPENDENTLY OF A CHILD SUPPORT ORDER; EXTENDING THE LIFE OF A WARRANT FOR

DISTRAINT FROM 90 DAYS TO 120 DAYS; ALLOWING AN AGREEMENT FOR SERVICE BY ELECTRONIC MEANS OF AN ORDER REQUIRING ENROLLMENT; PROVIDING PRIORITY FOR WITHHOLDING CHILD SUPPORT AND MEDICAL SUPPORT; ALLOWING ATTACHMENT OF CRIME VICTIMS COMPENSATION FOR THE PAYMENT OF MAINTENANCE OR CHILD SUPPORT; AMENDING SECTIONS 40-5-206, 40-5-208, 40-5-225, 40-5-226, 40-5-247, 40-5-412, 40-5-810, 40-5-812, 40-5-813, AND 53-9-129, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 40-5-206, MCA, is amended to read:

“40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, the department or other IV-D agency may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee *or as an aid to the operation of the IV-D program*, including:

- (a) name;
- (b) residential and mailing addresses;
- (c) date of birth;
- (d) social security number;
- (e) wages or other income;
- (f) number of dependents claimed for state and federal income tax withholding purposes;
- (g) *employer’s name, and address, federal employer identification number, North American industry classification system code, active or inactive status of the business and status date, phone number, facsimile number, address type, child support withholding address, and e-mail address of employer;*
- (h) *state and local tax and revenue records of the obligor or obligee or an entity in which the obligor or obligee directly or indirectly has full or partial ownership with rights to participate in general management and control that are derived from the full or partial ownership interest;*
- (i) penal corrections records;
- (j) address, location, and description of any real property or titled personal property; ~~and~~
- (k) any other asset in which the obligor or obligee may have an interest, including its location and the extent, nature, and value of the interest; *and*

(l) *the information listed in subsection (2)(g) for all Montana employers for the operation of the directory of new hires established under 40-5-922, including information received by electronic transmission.*

(3) Upon service of an administrative subpoena from the department or another IV-D agency during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained in customer records.

(4) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. Absent a specific statutory prohibition to the contrary and subject to subsection (6), the department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

(5) Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use or disclosure of information obtained by the department from confidential sources or any information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys and courts having jurisdiction in support and abandonment proceedings and agencies in other states engaged in the enforcement of support of minor children under the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

(6) The department may not disclose information regarding the whereabouts of a party to another party if:

(a) the department received notice that a protective order with respect to the party has been entered against the other party; or

(b) the department has reason to believe that the release of information may result in physical or emotional harm to the party.

(7) A person or private entity that discloses information to the department in compliance with this section is not liable to the obligor or obligee for negligent disclosure.

(8) An entity failing to comply with this section is subject to the contempt authority of the department under 40-5-226."

Section 2. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support — obligation enforcement. (1) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the support order must include a medical support order as defined in 40-5-804. *The department may initiate an independent proceeding pursuant to 40-5-225 to*

establish a medical support order, as defined in 40-5-804, without establishing a child support order in the proceeding.

(2) If the department is providing IV-D services for a child, the department shall also enforce any order issued by a court or administrative agency of competent jurisdiction that:

(a) requires the ~~obligor~~ *parent* to make payments for the health or medical needs of the child, whether expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

(b) requires the ~~obligor~~ *parent* to enroll a child in a health benefit plan or individual insurance as defined in 40-5-804. The department may take action to enforce the order under the provisions of part 8 or may impose any other appropriate remedy.

(3) (a) To permit the department to determine whether enforcement action is necessary, if the ~~obligor~~ *parent* is required to enroll the child in a health benefit plan or individual insurance, upon written request by the department, the ~~obligor~~ *parent* shall provide the name of the individual insurance carrier or health benefit plan, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(b) Failure of the ~~obligor~~ *parent* to provide the requisite information to the department may be punished as a contempt under 40-5-226.

(4) If the department is providing services for a child and a child support order or modification of a child support order does not include a medical support order as defined in 40-5-804 or fails to include any other provision for the health and medical needs of the child:

(a) upon notice to the ~~obligor~~ *parent*, the ~~obligor~~ *parent* shall enroll the child in a health or medical insurance plan available to the ~~obligor~~ *parent* through an employer or other group for which the premium is partially or entirely paid by the employer or other group; and

(b) the ~~obligor~~ *parent* shall continue enrollment of the child in the plan until:

(i) a medical support order is entered;

(ii) the ~~obligor~~ *parent* can demonstrate to the department that the cost of providing coverage is not reasonable;

(iii) the ~~obligor's~~ *parent's* employment or membership in the group has terminated and the plan is no longer available to the ~~obligor~~ *parent*;

(iv) the employer or group eliminates coverage for all employees or members; or

(v) the department ceases to provide services for the child.

(5) If the ~~obligor~~ *parent* fails to enroll a child in a health or medical insurance plan under subsection (4) or lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not be found if the ~~obligor~~ *parent* shows that the cost of providing coverage for the child is not reasonable."

Section 3. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) In the absence of an

existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. ~~The support~~ An order issued under this section must include a medical support order as required by 40-5-208.

(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child, *if any*;

(c) that the monthly support obligation, *if any*, is effective on the date of service of the notice, unless an objection is made and a hearing is requested, and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;

(d) that in addition to *or independent of* child support, the parent or parents may be ordered to provide for the child's medical support needs;

(e) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

(f) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

(g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;

(h) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

(i) that the parties are entitled to a fair hearing under 40-5-226.

(3) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.

(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be

credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

- (i) reconciled without the marriage having been dissolved;
- (ii) made joint application to the department to vacate the order or dismiss the proceeding; and
- (iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

- (a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or
- (b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:

- (i) within 20 days from the date of service of a notice of financial responsibility; and
- (ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support, *if any*, and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon

notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.

(10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a *child support or medical* support obligation for another child of the same parents.

(11) A child support and medical support order under subsection (1) is effective as of the date of service of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to the department for the enforcement of child support obligations. A final order is retroactive to the date of service of the notice of financial responsibility as provided in this subsection, except that the final order may also determine child support for a prior period as provided in 40-5-226(3).

(12) A child support and medical support order under subsection (1) continues until the child reaches 18 years of age or until the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."

Section 4. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.

(1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225;
or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical

support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

(7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support or medical support obligation established under this section is subject to the registration and processing provisions of part 9 of this chapter.

(8) A child support or medical support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(10) A child support *or medical support* obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

- (i) identity of the party;
- [(ii) social security number;]
- (iii) residential and mailing addresses;
- (iv) telephone number;
- (v) driver's license number;
- (vi) name, address, and telephone number of employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or a IV-D agency of another state under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 5. Section 40-5-247, MCA, is amended to read:

“40-5-247. Warrant for distraint — effect — satisfaction of support lien — redemption. (1) (a) The department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and collect any money obligation authorized under this chapter.

(b) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based. The warrant must include notice of:

- (i) the existence of exemptions from execution;
- (ii) the procedure by which an exemption may be claimed; and
- (iii) the right to request a hearing to determine an exemption claim.

(c) A warrant must be signed by the director of the department or the director's designee.

(d) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A warrant for distraint may also be served by acknowledgment of service ~~upon an entity that has entered into an agreement with the department to accept service of a warrant for distraint, including a warrant received by~~

electronic transmission. Upon receipt of the warrant, the served entity shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment and shall return the warrant, along with any funds collected, within ~~90~~ 120 days of receipt of the warrant.

(c) A copy of the warrant must be mailed to the obligor at the obligor's last-known address at or promptly after the time of seizure.

(d) Within 10 days after the date of the mailing of the warrant to the obligor, an obligor claiming an exemption may request a hearing to determine the existence of the exemption. The department shall convene a contested case hearing to determine the claimed exemption. An order entered under this section is a final agency order, subject to judicial review under Title 2, chapter 4, part 7.

(e) A sheriff or levying officer shall return a warrant, along with any funds collected, within ~~90~~ 120 days of the receipt of the warrant.

(f) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

(g) If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and accumulated interest, the department shall release the warrant.

(b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the warrant for distraint. The department may release the warrant if it determines that the warrant is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The

release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts.”

Section 6. Section 40-5-412, MCA, is amended to read:

“40-5-412. Delinquency income withholding. (1) (a) In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the day the obligor becomes delinquent in the payment of support.

(b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day of the month in which the payment is due.

(c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(2) (a) If the department determines that an obligor is delinquent, the department may notify the obligor that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice. If the obligor does not pay the delinquent amount within that time, the department may immediately send an order to withhold income to any payor. Notification that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by subsection (2)(b). ~~The order must be limited to current support unless modified to include arrears as provided in 40-5-413.~~

(b) At the same time an order to withhold income is sent to a payor, the department shall notify the obligor as provided in 40-5-413 that income withholding has been initiated.

(3) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is a delinquency, on the earlier of:

(a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

(4) To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

(5) The only basis for contesting withholding under this section is a mistake of fact, which does not include a mistake of fact relating to establishment of custody and visitation but includes a mistake:

- (a) concerning the obligor's identity;
 - (b) concerning the existence of the support obligation;
 - (c) concerning the amount of support to be paid;
 - (d) in the determination that the obligor is delinquent in the payment of support;
 - (e) in computation of delinquent support amounts owed; or
 - (f) in the allegation that the obligor is in default of an alternative agreement.
- (6) A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity or establishment of custody and visitation."

Section 7. Section 40-5-810, MCA, is amended to read:

"40-5-810. Notice of intent to enroll — order to enroll — authorization to enroll and participate in health benefit plan — rules.

(1) When a parent is required by a medical support order to obtain a health benefit plan for a child, the parent may be served with a notice of intent to enroll the child in any plan available to that parent. The notice may be issued separately or may be combined with any other notice issued under this part.

(2) The notice must contain a statement of the:

- (a) procedures to follow if the parent wishes to contest enrollment of a child in the plan;
- (b) conditions under which enrollment will occur and that enrollment applies to all current and subsequent plans; and
- (c) period of time within which the parent may file a request for a hearing to contest the enrollment.

(3) For notices issued by the department under this section, hearings must be contested cases under Title 2, chapter 4.

(4) The notice must be served upon the parent by certified mail or personally, including by acknowledgment of service.

(5) An order requiring enrollment of a child in a plan may be issued:

- (a) at any time after the parent's time for filing a request for a hearing on the notice of intent to enroll has lapsed;
- (b) as a result of a hearing that authorizes an order to enroll;
- (c) upon identifying a plan that is available to the parent; or
- (d) upon determining that the cost of the plan available to the parent is reasonable.

(6) An order requiring enrollment in a plan may be served on a plan administrator, an employer, or another individual or entity by certified mail, ~~or~~ personally, including by acknowledgment of service, *or by electronic service upon an entity that has entered into an agreement with the department to accept electronic service of an order under this part.*

(7) A plan administrator shall enroll a child when given a medical support order or an order to enroll the child issued under this section, even if a parent fails to execute documents required by the plan. The parents, the department, and a third-party custodian may release to a plan provider, employer, union, or other group any information necessary to obtain or enforce medical support or to facilitate the preparation, submission, processing, verification, or payment of claims.

(8) The signature of either parent, of an authorized representative of the department, or of a third-party custodian or the receipt of an order to enroll the child issued under this section authorizes the plan to receive and process claims and exercise any available options for the continuation or extension.

(9) (a) The order to enroll the child must instruct the employer to:

(i) transfer the ~~notice and~~ order to the plan administrator within 20 *working days of service* or by another date specified in the order;

(ii) notify the entity issuing the order of any lapse in insurance coverage or employment;

(iii) notify the entity issuing the order when the child is enrolled;

(iv) withhold any premiums from the parent's income and transfer the premiums to the plan; and

(v) not disenroll the child except in situations specified in the order.

(b) The order to enroll the child must instruct the plan administrator to, within 40 *working days of the date of receipt* of the order:

(i) take steps to cover the child, to notify the employer, and to provide verification of enrollment and a plan description to the department, parents, and any third-party custodian of the child; or

(ii) provide information to the entity issuing the order concerning why coverage is not available.

(10) The department may adopt rules in conformity with federal law establishing the priority of withholdings for financial support and medical support. Regardless of the priority of withholdings, the maximum amount withheld from the parent's wages or salary, including fees, may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act, 15 U.S.C. 1673.

(11) An order to enroll may be modified or replaced at any time to add a child to or remove a child from a plan, consistent with the parent's medical support obligation.

(12) The department may terminate an order to enroll issued by the department when the department is no longer authorized to enforce the parent's medical support obligation, when the parent's medical support obligation is terminated, or when the department determines that the cost of the plan to the parent is not reasonable."

Section 8. Section 40-5-812, MCA, is amended to read:

"40-5-812. Obligations of health benefit plan. (1) Upon receipt of a medical support order requiring a parent to provide coverage for a child *or an order requiring enrollment of a child pursuant to 40-5-810*, the administrator of a health benefit plan who receives the order shall accept the order as a valid authorization to enroll or provide benefits to the child. The health benefit plan may rely upon the face of the order and need not inquire as to its legal sufficiency.

(2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance is paid to the child, or a third-party custodian all notices and correspondence from the plan and allow them to freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively as if done by the obligated parent.

(3) A copy of the medical support order *or an order requiring enrollment of the child pursuant to 40-5-810* must be accepted by the plan administrator as a request and application of the eligible obligated parent requesting that new or continued benefits, including continuation coverage available under COBRA, be provided for the child. As soon as practical and no later than 30 days after receipt of the order or upon the obligated parent obtaining eligibility, the child must be enrolled under the plan as an individual entitled to available benefits. Enrollment may not be delayed until an open enrollment period.

(4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in 40-5-813.

(5) Within 30 days after receipt of a copy of a medical support order *or within 40 working days after the date of an order issued pursuant to 40-5-810*, the health benefit plan shall give written notice to both parents, to the department, and to any third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide written notice to both parents, to the department, whenever public assistance is paid for the child, or to the third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(7) A plan administrator may not terminate a child's coverage unless:

(a) written evidence shows that the medical support order *or the order requiring enrollment of the child pursuant to 40-5-810* is no longer in effect, that the child will be enrolled in another health benefit plan, or that individual insurance is provided;

(b) the employer, union, or other group eliminates coverage for all members or employees;

(c) the plan is available through the obligated parent's employer or other payor of income and the obligated parent's employment or right to receive income from the payor is terminated and continued coverage under COBRA is not available or the time for such coverage is expired; or

(d) the plan is available through the obligated parent's employer or other payor of income, the amount of the premium or the premium together with child support exceeds the limits in this section, and the other parent, the department, or the third-party custodian has not cured the insufficiency under 40-5-811."

Section 9. Section 40-5-813, MCA, is amended to read:

"40-5-813. Obligation of payor. (1) Upon receipt of a medical support order *or an order requiring enrollment of the child pursuant to 40-5-810*, a payor providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act. If the premium exceeds the maximum, the payor may not withhold the excess. If the *total cost of the premium, together with* and child support to be withheld, ~~exceeds the maximum, for current support and arrears~~

exceeds the maximum amount permitted under the federal Consumer Credit Protection Act, the current child support has priority and the full cost of the premium have priority before the arrears. If the total cost of the premium and current support exceed the amount of permissible garnishment, the current support and arrears take priority over the premium up to the maximum amount permitted under the federal Consumer Credit Protection Act. The payor may not withhold the part of the premium that is in excess of the maximum.

(2) A medical support order or an order requiring enrollment of the child pursuant to 40-5-810 has priority over garnishment of the income of the obligated parent for any purpose, except child support.

(3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment following any break in service, layoff, leave of absence, or other similar circumstance.

(b) Upon the termination of employment, extended layoff, or any other break in service that causes coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the department or the third-party custodian; if either submitted the medical support order, *the order requiring enrollment of the child pursuant to 40-5-810*, or ~~submitted~~ a written notice of interest to the plan.

(4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action against an obligated parent solely because of the issuance of a medical support order or *an order requiring enrollment of the child pursuant to 40-5-810*.

(b) The obligated parent has the burden of proving that the issuance of the medical support order or *the order requiring enrollment of the child pursuant to 40-5-810* was the sole reason for the employer's action.

(c) A payor knowingly violating this section is subject to the contempt powers of the tribunal issuing the medical support order or *the order requiring enrollment of the child pursuant to 40-5-810*. The tribunal may, in addition, impose a civil penalty of not more than \$150."

Section 10. Section 53-9-129, MCA, is amended to read:

"53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception. (1) An award is not subject to execution, attachment, garnishment, or other process, *except an execution, attachment, or garnishment of a right to compensation for work loss to secure payment of maintenance or child support.*

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee."

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 432

[HB 220]

AN ACT REQUIRING LOCAL GOVERNMENTS TO USE ELECTRONIC FUNDS TRANSFERS IN MAKING PAYMENTS TO THE STATE IF SO REQUESTED BY THE STATE TREASURER OR A STATE AGENCY AND IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO CONDUCT ELECTRONIC FUNDS TRANSFERS; AUTHORIZING A STATE AGENCY OR THE STATE TREASURER TO MAKE PAYMENTS TO LOCAL GOVERNMENTS BY ELECTRONIC FUNDS TRANSFER IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO RECEIVE PAYMENTS BY ELECTRONIC FUNDS TRANSFER; AMENDING SECTIONS 7-6-2601, 7-6-4501, AND 17-8-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-6-2601, MCA, is amended to read:

“7-6-2601. Details related to county warrants — payments to state — definition. (1) Warrants issued pursuant to 7-6-2202(1) must be signed by the county clerk and the presiding officer of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each warrant, the name of the person to whom it is payable, and the purpose for which it is drawn must be stated on the warrant. Warrants must, at the time they are issued, be registered by the county clerk.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

(4) *All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the county has the technology to conduct electronic funds transfers.*

~~(4)~~(5) For the purposes of this part, “warrant” includes a check and an electronic funds transfer.”

Section 2. Section 7-6-4501, MCA, is amended to read:

“7-6-4501. Interest on unpaid warrants — payments to state — definition. (1) When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the warrant is not paid for want of funds, the city treasurer or town clerk shall endorse thereon “Not paid for want of funds”, annexing the date of presentation, and signing the treasurer’s or clerk’s name to the warrant.

(2) From the time of the endorsement until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance, or if the warrant is subject to purchase for investment by a county as provided in 7-6-2701 and is held by a county, the warrant bears interest at a rate fixed by the board of county commissioners under 7-6-2701.

(3) *All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the city or town has the technology to conduct electronic funds transfers.*

~~(3)~~(4) As used in this part, "warrant" includes a check and an electronic funds transfer."

Section 3. Section 17-8-311, MCA, is amended to read:

"17-8-311. Payments to local government entities — notice. (1) For the purposes of this section, the following definitions apply:

(a) "Finance officer" means the county treasurer, city treasurer, town clerk, or the equivalent provided for in Title 7, chapter 3.

(b) "Local government entity" means a public entity that, whether or not governed by the legislative body of the local government, is required by law to conduct financial affairs through the finance officer of a city, town, or county. The term does not include a school district or a conservation district.

(2) (a) All payments made by a state agency *or the state treasurer* to any city, town, county, or local government entity must be payable to the finance officer of the appropriate city, town, or county.

(b) *Any payment referred to in subsection (2)(a) may be made by electronic funds transfer at the discretion of the state agency or state treasurer if the entity receiving the payment has the technology to receive payment by electronic funds transfer.*

(c) If the payment is to be deposited to the credit of a local government entity, the finance officer shall mail a notice of receipt of the payment to the local government entity. When applicable, the finance officer shall deposit the payment in the appropriate fund or account to the credit of the local government entity.

(3) If the state agency *or the state treasurer* is unable to determine if the payee is a government entity, the state agency *or state treasurer* shall process the claim as if it was not payable to a government entity. The state agency *or state treasurer* shall also mail a notice of issuance of the payment to the finance officer of the county and city to which the payment was issued.

(4) If a finance officer of a county receives a payment under subsection (2) or a notice of issuance under subsection (3), ~~he~~ *the finance officer* shall notify the county clerk and recorder that the payment or notice has been received."

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

Approved April 28, 2005

CHAPTER NO. 433

[HB 230]

AN ACT REQUIRING CERTIFIED NOTICE OF ADEQUATE STORM WATER DRAINAGE AND MUNICIPAL FACILITIES TO THE REVIEWING AUTHORITY PRIOR TO FINAL PLAT APPROVAL RATHER THAN WITHIN 20 DAYS AFTER PRELIMINARY PLAT APPROVAL; PROVIDING FOR CERTIFICATION THAT ADEQUATE MUNICIPAL FACILITIES FOR THE SUPPLY OF WATER AND DISPOSAL OF SEWAGE AND SOLID WASTE WILL BE PROVIDED; AND AMENDING SECTION 76-4-127, MCA.

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

Section 1. Section 76-4-127, MCA, is amended to read:

“76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, ~~within 20 days after preliminary plat approval~~ *prior to final plat approval* under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town;

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided ~~within 1 year after the notice of certification is issued~~ *within the time provided in 76-3-507;*

(i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and

(j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.”

Section 2. Coordination instruction. If both Senate Bill No. 116 and [this act] are passed and approved, then 76-4-127 must read as follows:

“76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, ~~within 20 days after preliminary plat approval~~ *prior to final plat approval* under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat *included with the application for the proposed subdivision* or a final plat when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town;

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within ~~1 year after the notice of certification is issued~~ *the time provided in 76-3-507*;

(i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and

(j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.”

Approved April 28, 2005

CHAPTER NO. 434

[HB 236]

AN ACT MAKING PERMANENT THE CLARK FORK RIVER BASIN TASK FORCE; PROVIDING DIRECTION ON TASK FORCE RESPONSIBILITIES IN THE FUTURE; AMENDING SECTION 85-2-350, MCA; REPEALING SECTION 6, CHAPTER 447, LAWS OF 2001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-350, MCA, is amended to read:

“85-2-350. (Temporary) Clark Fork River basin task force — duties — water management plan. (1) The governor’s office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare ~~a water management plan for the Clark Fork River basin pursuant to proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin.~~ The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in ~~the development of a studies of water management plan in the Clark Fork River basin;~~ and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River. ~~At least one representative from this basin must be a representative of the Confederated Salish and Kootenai tribal government;~~

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

~~(2) The task force shall examine, for applicability to the water management plan, existing laws, rules, plans, and other provisions affecting water management in the Clark Fork River basin, including:~~

~~(a) the temporary closure of Bitterroot River subbasins pursuant to 85-2-344;~~

~~(b) the closure of the Upper Clark Fork River basin pursuant to 85-2-336;~~

~~(c) the restrictions on ground water development in the Upper Clark Fork River basin provided for in 85-2-337; and~~

~~(d) the Upper Clark Fork River basin management plan, adopted as a section of the state water plan pursuant to 85-1-203. Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government must have the right to appoint a representative to the task force.~~

(3) The task force shall:

(a) *identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;*

(b) *identify data gaps regarding basin water resources, especially ground water;*

(c) *coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;*

(d) *provide a forum for all interests to communicate about water issues;*

(e) *advise government agencies about water management and permitting activities in the Clark Fork River basin;*

(f) *consult with local and tribal governments within the Clark Fork River basin;*

(g) *make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and*

(h) *report to:*

(i) *the department on a periodic basis;*

(ii) *the environmental quality council annually; and*

(iii) *the natural resources and commerce appropriations subcommittee each legislative session. prepare a water management plan for the Clark Fork River basin pursuant to 85-1-203. The water management plan must identify options*

~~to protect the security of water rights and provide for the orderly development and conservation of water in the future.~~

~~(4) The task force shall submit an interim report annually by October 31 on its activities to the governor and the legislature.~~

~~(5) The water management plan, including the information prepared by the task force under this section, must be submitted to the 59th legislature, as provided in 85-1-203, by September 15, 2004. (Terminates April 15, 2005—see 6, Ch. 447, L. 2001.)”~~

Section 2. Repealer. Section 6, Chapter 447, Laws of 2001, is repealed.

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

Approved April 28, 2005

CHAPTER NO. 435

[HB 250]

AN ACT PROVIDING THAT A HEALTH CARE FACILITY OR GOVERNMENT AGENCY THAT DEALS WITH HEALTH CARE DOES NOT COMMIT THE CRIME OF VIOLATING PRIVACY IN COMMUNICATIONS IF IT RECORDS A HEALTH CARE EMERGENCY TELEPHONE COMMUNICATION MADE TO THE FACILITY OR AGENCY; AND AMENDING SECTION 45-8-213, MCA.

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

Section 1. Section 45-8-213, MCA, is amended to read:

“45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or *to public* employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings; ~~or~~

(iii) persons given warning of the transcription or recording; *or*

(iv) *a health care facility as defined in 50-5-101 or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.*

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or *to public* employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(3) (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

Approved April 28, 2005

CHAPTER NO. 436

[HB 254]

AN ACT MAKING IT A CIVIL OFFENSE FOR A MEDICAL PRACTITIONER TO ISSUE A WRITTEN PRESCRIPTION ON WHICH THE NAME OF THE DRUG, DOSAGE, INSTRUCTIONS, OR IDENTIFIERS OF THE PRESCRIBING MEDICAL PRACTITIONER CANNOT BE DETERMINED; PROVIDING FOR ENFORCEMENT; REQUIRING ADOPTION OF RULES; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Civil penalty for unreadable prescription. (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than \$500 for each prescription.

Section 2. Time for adopting rules. Rules required by [section 1(2)] must be adopted by July 1, 2006.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 1, and the provisions of Title 37, chapter 2, part 1, apply to [section 1].

Section 4. Applicability. [This act] applies to a prescription written after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 437

[HB 302]

AN ACT INCLUDING THE DISSEMINATION OF INFORMATION BY A BOARD OF TRUSTEES OR A SCHOOL SUPERINTENDENT OR A DESIGNATED EMPLOYEE IN A DISTRICT WITH NO SUPERINTENDENT RELATED TO A BOND ISSUE OR LEVY SUBMITTED TO THE ELECTORS AS "PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW"; AMENDING SECTIONS 2-2-121 AND 13-35-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) ~~A~~ *Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:*

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) *in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.*

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(5) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 2. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to *perform activities properly incidental to another activity required or authorized by law or to express personal political views.*

(5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125."

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

Approved April 28, 2005

CHAPTER NO. 438

[HB 317]

AN ACT ALLOWING A SCHOOL BOARD TO MEET IN ANY BUILDING THAT IS ACCESSIBLE TO THE PUBLIC; AND AMENDING SECTION 20-3-322, MCA.

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

Section 1. Section 20-3-322, MCA, is amended to read:

“20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

- (a) an organization meeting, as prescribed by 20-3-321;
- (b) a final budget meeting, as prescribed by 20-9-131; and
- (c) in first-class elementary districts, not less than one regular meeting each month; or
- (d) in any other district, regular meetings at least quarterly.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or, *upon the unanimous vote of the trustees*, in a publicly owned accessible building located within the district.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), “unforeseen emergency” means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.”

Approved April 28, 2005

CHAPTER NO. 439

[HB 332]

AN ACT APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO BE USED FOR THE LOW-INCOME ENERGY ASSISTANCE PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Appropriation. There is appropriated \$903,255 from the state general fund for fiscal year 2005 to the department of public health and human services to be used for the low-income energy assistance program authorized in 53-2-201.

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

Approved April 28, 2005

CHAPTER NO. 440

[HB 345]

AN ACT EXTENDING THE PERIOD OF TIME FOR WHICH A CAUSE OF ACTION FOR A FRAUDULENT TRANSFER MAY BE FILED; AMENDING SECTION 31-2-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 31-2-341, MCA, is amended to read:

“31-2-341. ~~Extinguishment~~ Termination of cause of action. A cause of action with respect to a fraudulent transfer or obligation under this part is ~~extinguished~~ *terminated* unless an action is brought under:

(1) 31-2-333(1)(a) within ~~2~~ 4 years after the transfer was made or the obligation was incurred or, if later, within ~~1 year~~ 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) 31-2-333(1)(b) or 31-2-334(1) within ~~2~~ 4 years after the transfer was made or the obligation was incurred; or

(3) 31-2-334(2) within ~~1 year~~ 2 years after the transfer was made or the obligation was incurred.”

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

Approved April 28, 2005

CHAPTER NO. 441

[HB 348]

AN ACT RESTRICTING YOUTH ACCESS TO ALCOHOL; AND PROVIDING FOR REGISTRATION OF SALES OF KEGS OF BEER.

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

Section 1. Keg registration. (1) A licensee may not sell a keg of beer unless an identification tag is attached to the keg by the licensee.

(2) An identification tag must consist of paper, plastic, metal, or durable material that is not easily damaged or destroyed. An identification tag may be attached to a keg at the time of sale with a nylon tie or cording, wire tie or other metal attachment device, or other durable means of tying or attaching the tag to the keg.

(3) The identification information contained on the tag must include:

(a) the licensee’s name, address, and telephone number; and

(b) a prominently visible warning that intentional removal or defacement of the tag is a criminal offense.

(4) A retailer that accepts the return of a keg that does not have an identification tag attached shall obtain the information required in [section 2] on the original purchaser, to the extent possible, and obtain the same information on the person returning the keg. This information must be kept on file with the retailer for not less than 45 days from the date of return.

(5) A person, other than the licensee, the wholesaler of malt beverages, or a law enforcement officer, may not intentionally remove identification placed on a keg in compliance with this section.

(6) For the purposes of [sections 1 through 4], the following definitions apply:

(a) "Keg" means a brewery-sealed, single container that contains not less than 7 gallons of beer.

(b) "Licensee" means a person who is licensed under Title 16, chapter 4, and who sells kegs to a consumer.

(7) The department shall develop and make available the identification tags required by this section.

Section 2. Recordkeeping. (1) A licensee, at the time of the sale of a keg, shall record the following:

(a) the purchaser's name, address, and date of birth and the number of the purchaser's driver's license, state-issued or military identification card, or valid United States or foreign passport;

(b) the date of purchase;

(c) the name of the clerk making the sale;

(d) the keg identification number required under [section 1]; and

(e) the purchaser's signature and date of purchase.

(2) The licensee shall maintain the record for not less than 45 days after the date of the sale.

(3) A licensee who maintains the records required by this section shall make the records available during regular business hours for inspection by law enforcement pursuant to [section 3].

Section 3. Enforcement. (1) A law enforcement officer may not request information on file about the original purchaser of a keg unless in connection with a violation of 16-6-305, 45-5-623, or 45-5-624(4). The officer shall return any recovered keg to the licensee and verify the information on file about the original purchaser.

(2) The deposit on the keg and any related deposit to the licensee must be forfeited by the original purchaser.

Section 4. Violations. (1) A person who knowingly fails to attach a keg tag as provided in [section 1] is guilty of a misdemeanor and shall be fined an amount not to exceed \$100.

(2) A person may not remove, deface, or damage the identification on a keg purposely to make it unreadable. A person convicted of purposely removing or defacing a tag shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for not more than 6 months, or both.

Section 5. Codification instruction. [Sections 1 through 4] are 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 [sections 1 through 4].

Approved April 28, 2005

CHAPTER NO. 442

[HB 349]

AN ACT REVISING STATUTES CONCERNING PUBLIC INTOXICATION AND THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-24-107, MCA, is amended to read:

“53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated ~~or incapacitated by alcohol~~ in public ~~commits no~~ *does not commit* a criminal offense solely by reason of being in ~~such an~~ *intoxicated* condition but may be detained by a peace officer for the person’s own protection. A peace officer who detains a person who appears to be intoxicated ~~or incapacitated by alcohol~~ in public shall proceed in the manner ~~as provided by~~ *in* 53-24-303 ~~and subsection (3) of this section.~~

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated ~~or incapacitated by alcohol~~ ~~in jail~~ until the person is no longer creating a risk to ~~himself~~ *self* or others.

(3) *A peace officer, in detaining the person, shall make every reasonable effort to protect the person’s health and safety. The peace officer may take reasonable steps for the officer’s own protection. An entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime.*

~~(4)~~ (4) A peace officer, ~~acting within the scope of his authority under this chapter, shall not be personally liable for his actions~~ *acting within the scope of the officer’s authority under this chapter, is not personally liable for the officer’s actions.”*

Section 2. Section 53-24-303, MCA, is amended to read:

“53-24-303. Treatment and services for intoxicated persons and ~~persons incapacitated by alcohol.~~ (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person’s home, an approved private treatment facility, or other health *care* facility by the police, ~~if the person consents to an offer for help.~~

(2) ~~A person who appears to be incapacitated by alcohol must be taken into protective custody by the police and must be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person, are taking the person into protective custody and shall make every reasonable effort to protect the person’s health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps for the officer’s own protection. An entry or other record may not be made to indicate that the person taken into custody under this section has been arrested or charged with a crime~~ *A peace officer, acting within the scope of the officer’s authority under this chapter, is not personally liable for the officer’s actions.”*

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

Approved April 28, 2005

CHAPTER NO. 443

[HB 453]

AN ACT PROVIDING FOR ADMINISTRATIVE PENALTIES UNDER THE SOLID WASTE, JUNK VEHICLE, UNDERGROUND STORAGE TANK LICENSING, AND SANITATION IN SUBDIVISION LAWS; AMENDING VENUE PROVISIONS FOR ENFORCEMENT ACTIONS; AMENDING SECTIONS 75-10-227, 75-10-228, 75-10-540, 75-10-542, 75-11-218, 75-11-223, 76-4-108, AND 76-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-10-227, MCA, is amended to read:

“75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, *a violation of an order issued under this part*, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or ~~his~~ *the violator’s* agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order, *an order assessing an administrative penalty pursuant to 75-10-228, or both*. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department’s order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds ~~no~~ *that a violation has not* occurred, it shall rescind the department’s order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

- (a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges; or
- (b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.*”

Section 2. Section 75-10-228, MCA, is amended to read:

“75-10-228. Civil and administrative penalties. (1) A person who violates ~~any~~ *a* provision of this part, a rule adopted *or an order issued* under this part, or a license provision is subject to *an administrative penalty not to exceed \$250 or a civil penalty not to exceed \$1,000* ~~\$1,000~~ *\$1,000*. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. *The enforcement or collection*

action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Fines and penalties collected ~~for violations of this part~~ *under this section* must be deposited in the solid waste management account provided for in 75-10-117.”

Section 3. Section 75-10-540, MCA, is amended to read:

“75-10-540. Administrative enforcement. (1) When the department determines that a violation of this part, a violation of a rule adopted *or an order issued* under this part, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator’s agent. The notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time, *an order assessing an administrative penalty pursuant to 75-10-542, or both.* The order becomes final 30 days after the notice is served unless the person named requests, in writing, a hearing before the board. On receipt of the request for a hearing, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or change the department’s order. An order may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department’s order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order pursuant to subsection (1).

(4) *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.”*

Section 4. Section 75-10-542, MCA, is amended to read:

“75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates *a provision* of this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ *is* subject to *an administrative penalty of not more than \$50 or a civil penalty of not more than \$50 \$250.* Each day upon which a violation of this part, ~~or~~ a rule, or *an order* occurs is a separate violation.

(3) *The penalties provided for in this section are recoverable in an enforcement or collection action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County.”*

Section 5. Section 75-11-218, MCA, is amended to read:

“75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person’s agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation, closure, or inspection, ~~or~~ an order to take necessary corrective action within a reasonable time as stated in the order, ~~or an order assessing an administrative penalty pursuant to 75-11-223.~~ ~~Every~~ A notice and order must be signed by the director of the department or the director’s ~~deputy~~ *designee* and must be served personally or by certified mail upon the person or the person’s agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department’s order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department’s order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.

(5) *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.*”

Section 6. Section 75-11-223, MCA, is amended to read:

“75-11-223. Civil and administrative penalties. (1) ~~Any~~ A person who violates ~~any~~ a provision of this part, a rule adopted under this part, or an order of the department or the board is subject to *an administrative penalty not to exceed \$500 per violation* or a civil penalty not to exceed \$10,000 per violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. *The enforcement or collection action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County.* Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224.”

Section 7. Section 76-4-108, MCA, is amended to read:

“76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted *or an order issued* under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator’s agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. *A notice and order issued by the department under this section may also assess an administrative penalty as provided in 76-4-109.* The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.

(5) If the department or a local reviewing authority determines that a violation of this part, *a rule adopted under this part, or an order issued under this part* has occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.”

Section 8. Section 76-4-109, MCA, is amended to read:

“76-4-109. Penalties. (1) A person ~~violating any~~ *who violates* a provision of this part, except 76-4-122(1), or ~~any~~ *a rule adopted or an order issued* under this part is guilty of an offense and subject to a fine ~~of~~ not to exceed \$1,000.

(2) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule *adopted* or order issued under this part is subject to *an administrative penalty not to exceed \$250 or a civil penalty not to exceed \$1,000* \$1,000. Each day of violation constitutes a separate violation.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.”

Section 9. Coordination instruction. If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 75-10-228 in both House Bill No. 429 and [this act] are void and 75-10-228 must read as follows:

“75-10-228. Civil penalties. (1) A person who violates ~~any~~ a provision of this part, a rule adopted or an order issued under this part, or a license provision is subject to an administrative penalty not to exceed \$250 or a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. *The enforcement or collection action must be brought in the district court of the county in which the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district, Lewis and Clark County.* Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1 of House Bill No. 429].*

~~(3)~~(4) *Fines and penalties collected for violations of this part under this section must be deposited in the solid waste management account provided for in 75-10-117.”*

Section 10. Coordination instruction. If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 75-10-542 in both House Bill No. 429 and [this act] are void and 75-10-542 must read as follows:

“75-10-542. Penalties. (1) A person who ~~willfully~~ *purposely or knowingly* violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$250, be imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates a provision of this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ *is* subject to an administrative penalty of not more than \$50 or a civil penalty of not more than ~~\$50~~ \$250. Each day upon which a violation of this part, or a rule, or an order occurs is a separate violation.

(3) *Penalties assessed under subsection (2) must be determined in accordance with the penalty factors in [section 1 of House Bill No. 429]. The penalties provided for in this section are recoverable in an enforcement or collection action brought by the department. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.”*

Section 11. Coordination instruction. If House Bill No. 429 and [this act] are passed and approved, then [section 19(2)] of House Bill No. 429 is void.

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Effective date. [This act] is effective on passage and approval.
Approved April 28, 2005

CHAPTER NO. 444

[HB 474]

AN ACT ELIMINATING THE REQUIREMENT THAT A COUNTY LEGAL NOTICE BE PUBLISHED IN A NEWSPAPER WITH A PAID CIRCULATION AND A PERIODICALS MAILING PERMIT; AND AMENDING SECTION 7-1-2121, MCA.

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

Section 1. Section 7-1-2121, MCA, is amended to read:

“7-1-2121. Publication and content of notice — proof of publication.

Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must be:

~~(a)(i)~~ of general paid circulation ~~with a periodicals mailing permit;~~

~~(b)(ii)~~ published at least once a week; and

~~(c)(iii)~~ published in the county where the hearing or other action will take place.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.”

Approved April 28, 2005

CHAPTER NO. 445

[HB 536]

AN ACT REVISING THE LAWS RELATING TO THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; REMOVING THE TERMINATION OF THE SURCHARGE; PROVIDING FOR THE DEPOSIT OF THE SURCHARGE IN THE STATE GENERAL FUND TO BE USED FOR FUNDING COURT INFORMATION TECHNOLOGY; REQUIRING THE SUPREME COURT ADMINISTRATOR TO REPORT TO THE LEGISLATURE ON THE STATUS OF JUDICIAL BRANCH INFORMATION TECHNOLOGY AND TO COORDINATE WITH THE STATE STRATEGIC INFORMATION TECHNOLOGY PLAN; AMENDING SECTIONS 3-1-317 AND 3-1-702, MCA; REPEALING SECTION 3-5-904, MCA, AND SECTION 5, CHAPTER 498, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 3-1-317, MCA, is amended to read:

“3-1-317. ~~(Temporary)~~ (Temporary) User surcharge for court information technology — exception. (1) Except as provided in subsection (2), all courts of original jurisdiction shall impose:

(a) on a defendant in criminal cases, a \$10 user surcharge upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;

(b) on the initiating party in civil and probate cases, a \$10 user surcharge at the commencement of each action, proceeding, or filing; and

(c) on each defendant or respondent in civil cases, a \$10 user surcharge upon appearance.

(2) If a court determines that a defendant in a criminal case or determines pursuant to 25-10-404 that a party in a civil case is unable to pay the surcharge, the court may waive payment of the surcharge imposed by this section.

(3) The surcharge imposed by this section is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the department of revenue for deposit in the ~~account established in 3-5-904~~ *state general fund to be used for state funding of court information technology. (Terminates June 30, 2005—sec. 5, Ch. 498, L. 2003.) (Terminates June 30, 2009.)*”

Section 2. Section 3-1-702, MCA, is amended to read:

“3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) *report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.*

~~(3)~~(4) recommend to the supreme court improvements in the judiciary;

(4)(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

~~(5)~~(6) administer state funding for district courts, as provided in chapter 5, part 9;

~~(6)~~(7) administer the judicial branch personnel plan; and

~~(7)~~(8) perform other duties that the supreme court may assign.”

Section 3. Repealer. Section 3-5-904, MCA, and section 5, Chapter 498, Laws of 2003, are repealed.

Section 4. Effective date. [This act] is effective June 28, 2005.

Approved April 28, 2005

CHAPTER NO. 446

[HB 590]

AN ACT ALLOWING FOR THE REACTIVATION OF AN ELECTOR IF THE ELECTOR APPEARS IN ORDER TO VOTE OR VOTES BY ABSENTEE BALLOT IN ANY ELECTION; AND AMENDING SECTIONS 13-2-222 AND 13-2-512, MCA.

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

Section 1. 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 in order to vote *or votes by absentee ballot* in ~~a federal~~ any election;

(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.

~~(2) To be effective for a nonfederal election, a reactivation of an elector must be accomplished no later than 30 days before the election.~~

~~(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 2. Section 13-2-512, MCA, is amended to read:

“13-2-512. Right to vote when precinct or name changed — inactive elector — 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 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.

~~(4) If an inactive elector appears to vote or votes by absentee ballot in a federal election, that elector must be allowed to vote and must be removed from the inactive list and placed on the active list.”~~

Approved April 28, 2005

CHAPTER NO. 447

[HB 742]

AN ACT REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND MAINTAIN A HEALTH CARE DECLARATION REGISTRY FOR DECLARATIONS RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT; ESTABLISHING METHODS FOR FILING DECLARATIONS AND FOR ACCESSING THE REGISTRY BY CERTAIN PERSONS AND HEALTH CARE PROVIDERS; PROVIDING AN APPROPRIATION TO BE USED IN ESTABLISHING AND MAINTAINING THE REGISTRY; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Health care declaration registry — website — rulemaking. (1) The attorney general shall establish and maintain a health care declaration registry.

(2) The registry must be accessible through a website maintained by the attorney general.

(3) The registry must be used to store declarations pertaining to life-sustaining treatment made pursuant to 50-9-103 that are filed with the attorney general.

(4) The registry must be maintained in a secure database that is designed to provide authorized health care providers with immediate access to the registry at all times.

(5) The attorney general may adopt rules to implement the creation and maintenance of a health care declaration registry and for the creation and maintenance of the statewide education and outreach program created in [section 5].

Section 2. Health care declaration registry filing provisions — special revenue fund — failure to file declaration or notify of revocation — duty of health care providers to access registry. (1) An individual or a person designated by the individual may file with the attorney general, for entry into the health care declaration registry, a declaration provided for in 50-9-103 that pertains to life-sustaining treatment.

(2) (a) The attorney general may accept gifts, grants, donations, bequests, and other forms of voluntary contributions to support, promote, and maintain the registry.

(b) There is a health care declaration account in the state special revenue fund. Money received pursuant to subsection (2)(a) and any money transferred from the general fund to the health care declaration registry must be deposited in the account and must be used by the attorney general to create and maintain the health care declaration registry and to create and maintain an education and outreach program for the public regarding advance health care planning and end-of-life health care decisionmaking.

(3) (a) Failure to file the declaration with the attorney general does not affect the validity of the declaration.

(b) Failure to notify the attorney general of a revocation of the declaration made pursuant to 50-9-104, does not affect the validity of the revocation.

(4) A health care provider is not required to access the registry in order to determine if a qualified patient has filed a declaration with the attorney general.

Section 3. Entry of declaration into health care declaration registry — removal of declaration. (1) Upon receipt of a declaration pertaining to life-sustaining treatment, the attorney general shall determine if the declaration is in compliance with the provisions of 50-9-103. If the declaration is not in compliance with the provisions of 50-9-103, the attorney general shall return the declaration together with a statement that the declaration was not filed due to its nonconformance with the requirements of 50-9-103.

(2) (a) If a declaration is accepted for filing, the attorney general shall create a digital copy of the declaration and enter it into the database of the health care declaration registry.

(b) The attorney general shall assign a unique access code to each individual who files a declaration that may be used by that individual or by a health care provider in a case in which the individual becomes a qualified patient to access the registry to view the filed declaration.

(c) (i) After entering the digital copy of the declaration in the registry, the attorney general shall return to the individual filing the declaration the original declaration along with two wallet-sized cards that indicate that a copy of the declaration exists in the registry and that the name and access code on the cards may be used to access the registry to view an electronic copy of the declaration.

(ii) (A) In addition to the materials provided to an individual filing a declaration under subsection (2)(c)(i), the attorney general shall include a form asking the individual filing the declaration to indicate on the form the privacy level that the individual desires with respect to accessing the declaration and asking the individual to return the form to the attorney general.

(B) An individual shall choose between two privacy levels. The standard privacy level allows access by the individual filing the declaration, appropriate health care providers, anyone with the name and access code, and anyone with the social security number, birth date, and mother's maiden name of the individual who filed the declaration. The higher privacy level allows access only by the individual filing the declaration, appropriate health care providers, and anyone with the name and access code. If a form indicating a choice of privacy level is not returned to the attorney general, the attorney general shall use the standard privacy level in determining access to a declaration.

(3) If the attorney general receives a notice of the revocation of a declaration that is contained in the health care declaration registry or is notified that a person who is the subject of a declaration filed in the registry is deceased, the attorney general shall remove that declaration from the registry.

Section 4. Registry information — confidentiality — transfer of information. (1) The health care declaration registry must be designed to be accessible only by entering a name and access code on the internet website maintained by the attorney general or by the use of a password issued pursuant to subsection (3).

(2) Names and access codes are confidential and may not be disclosed to any person other than the person who submitted the declaration, a person named in the declaration, or a health care provider for whom the person named in the declaration is a qualified patient.

(3) (a) The attorney general shall issue confidential passwords to attending physicians, attending advanced practice registered nurses, and hospital medical records department staff that allow them to search the health care declaration database for a qualified patient who is unable to communicate health care choices.

(b) The attorney general shall establish by rule procedures for applying for and the issuance of confidential passwords to those persons described in subsection (3)(a).

(4) At the request of a person who submitted a declaration or who is named in the declaration, the attorney general may transmit the information received regarding the declaration to the registry system of another jurisdiction as identified by the requestor.

Section 5. Statewide education and outreach program. (1) The attorney general shall design, maintain, and administer a public education and outreach program to be conducted throughout the state pertaining to advance health care planning and end-of-life health care decisionmaking.

(2) The program must be designed to:

(a) increase the public's awareness of the importance of planning for end-of-life health care;

(b) improve the public's understanding of the various health situations that an individual may face if the individual is unable to express the individual's health care wishes; and

(c) explain the need for readily available legal documents that express an individual's health care wishes.

Section 6. Appropriation. There is appropriated \$80,000 from the general fund to the attorney general for the biennium ending June 30, 2007, for the health care declaration registry and a related public education program.

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [sections 1 through 5].

Section 8. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 448

[SB 108]

AN ACT REVISING REQUIREMENTS FOR CERTIFICATION OF INDEPENDENT CONTRACTORS; PROVIDING A CONCLUSIVE PRESUMPTION THAT AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE VERIFIES AN INDEPENDENT CONTRACTOR'S STATUS FOR PURPOSES OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AUTHORITY TO SUSPEND OR REVOKE CERTIFICATION; SPECIFYING VIOLATIONS AND A PENALTY; CLARIFYING THE DEFINITION OF "INDEPENDENT CONTRACTOR"; DECLARING LEGISLATIVE INTENT FOR A CONCLUSIVE PRESUMPTION REGARDING AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; ALLOWING AN INDEPENDENT CONTRACTOR TO OPT OUT OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AN EXEMPTION TO THE GENERAL PROHIBITION AGAINST A WAIVER OF STATUTES; REVISING THE DISPUTE APPEAL PERIOD AND PROCESS; REPEALING A REQUIREMENT TO REPORT TO THE STATE COMPENSATION INSURANCE FUND; AMENDING SECTIONS 39-8-102, 39-51-201, 39-51-204, 39-71-105, 39-71-117, 39-71-401, 39-71-409, 39-71-415, AND 39-72-102, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Montana Supreme Court ruled in *Wild v. Fregein Construction*, 2003 MT 115, 315 Mont. 425, 68 P.3d 855, that the independent contractor exemption certificate does not raise a conclusive presumption as to the status of a person as an independent contractor and that an employer has an obligation to determine whether an individual is treated as an independent contractor or as an employee; and

WHEREAS, the Montana Supreme Court in the *Wild* decision ruled that it is against the public policy of the state for an employer to coerce a worker to work as an independent contractor by offering to pay an independent contractor at a rate higher than the employer pays employees; and

WHEREAS, the Montana Supreme Court in the *Wild* decision affirmed the twin determinants of independent contractor status as being "A" issues of control and "B" whether the individual is in an independent business, commonly known as the "A-B" test, and emphasized the necessity of both factors being present, with performing work for other persons being an indication of an independent business; and

WHEREAS, the concurring opinion in the Wild decision further suggested that the Department of Labor and Industry strengthen the certification process to provide a conclusive determination of independent contractor status; and

WHEREAS, the Wild decision created a great deal of uncertainty in matters involving independent contractors and employees in the business community, with employers and independent contractors coming together to propose a consensus solution after participating in a study required by Senate Bill 270, passed by the 58th Legislature; and

WHEREAS, the Montana Legislature considers enacting legislation appropriate to effectively reverse the Wild decision and to restore the conclusive presumption of an independent contractor exemption certificate as well as to allow employers to pay persons with the independent contractor exemption certificate at a rate higher than the rate paid to employees and additionally to allow a person with an independent contractor exemption certificate to work for only one employing unit without becoming an employee as well as to waive the benefits of the workers' compensation and occupational disease laws.

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

Section 1. Independent contractor certification. (1) (a) 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.

(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 a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(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) 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:

- (a) the applicant's name and address;
- (b) the applicant's social security number;
- (c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(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 the Occupational Disease Act of Montana and is precluded from obtaining benefits under either of those acts 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 and the Occupational Disease Act of Montana, 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 [section 2]; or
- (b) canceled by the independent contractor.

(9) If the department denies an application for an independent contractor exemption certificate, the applicant may contest the denial by petitioning the workers' compensation court within 30 days of the mailing of the denial.

Section 2. 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 [section 1(4)].

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

- (a) provided 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.

(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 and Occupational Disease Act of Montana 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 to suspend or revoke an independent contractor exemption certificate may be appealed in the same manner as provided in [section 1(9)] for denial of an application for an independent contractor exemption certificate.

Section 3. Independent contractor violations — penalty. (1) A person may not:

(a) perform work as an independent contractor without first:

(i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to [section 1(1)(a)]; or

(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;

(b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;

(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;

(d) alter or falsify an independent contractor exemption certificate; or

(e) misrepresent the person's status as an independent contractor.

(2) An employer may not:

(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

(b) exert control to a degree that causes the independent contractor to violate the provisions of [section 1(4)].

(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution.

Section 4. Section 39-8-102, MCA, is amended to read:

“39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

- (1) “Applicant” means a person that seeks to be licensed under this chapter.
- (2) “Client” means a person that obtains all or part of its workforce from another person through a professional employer arrangement.
- (3) “Controlling person” means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.
- (4) “Department” means the department of labor and industry.
- (5) “Employee leasing arrangement” means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.
- (6) “Licensee” means a person licensed as a professional employer organization or group under this chapter.
- (7) “Person” means an individual, association, company, firm, partnership, corporation, or limited liability company.
- (8) (a) “Professional employer arrangement” means an arrangement by contract or otherwise under which:
 - (i) a professional employer organization or group assigns employees to perform services for a client;
 - (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
 - (iii) the employer responsibilities are shared by the professional employer organization or group and the client.
- (b) The term does not include:
 - (i) services performed by a temporary service contractor;
 - (ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:
 - (A) that person’s principal business activity is not entering into professional employer arrangements; and
 - (B) that person does not represent to the public that the person is a professional employer organization or group;
 - (iii) arrangements existing for employment of an independent contractor, ~~as defined in 39-71-120~~ *working under an independent contractor exemption certificate provided for in [section 1]*; and
 - (iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.
- (9) “Professional employer group” or “group” means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) (a) “Professional employer organization” means:

(i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(11) “Temporary service contractor” means a person conducting a business that hires its own employees and assigns them to clients to fulfill 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.”

Section 5. 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 the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual’s 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 base period is the period applicable under the unemployment law of the paying state. 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 base period means 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”, with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the 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 year of a previously filed new claim. A subsequent benefit year may not be established 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 base period 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(4).

(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, ~~but~~.

(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 ~~that has or had in its~~ *in whose* employ one or more individuals ~~performing perform or performed~~ services ~~for it~~ 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 ~~are required to~~ *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 or 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 ~~who renders service in the course of an occupation and~~

~~(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and~~

~~(b) is engaged in an independently established trade, occupation, profession, or business working under an independent contractor exemption certificate provided for in [section 1].~~

(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 ~~it~~ *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) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(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; or

(iii) a no-additional-cost service.

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) An individual's "weekly *Weekly* benefit amount" means the amount of benefits that ~~the~~ *an* individual would be entitled to receive for 1 week of total unemployment."

Section 6. 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" is 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 member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) 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) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) 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) 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) 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) 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) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) 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) 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) 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) 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) 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) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act;

(x) 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) 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; or

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event.

(2) An individual found to be an independent contractor by the department under the terms of ~~39-71-401(3)~~ [section 1] 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.

(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 7. Section 39-71-105, MCA, is amended to read:

“39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) ~~It is an~~ An objective of the Montana workers’ compensation system is to provide, without regard to fault, wage supplement 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; ~~they~~ but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of Title 39, chapters 71 and 72, unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

~~(2)~~(3) A worker's removal from the ~~work force due to~~ 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, it is 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.

~~(3)~~(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.

~~(4)~~(5) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

~~(5)~~(6) It is the intent of the legislature that 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, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system."

Section 8. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements

set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-401(3) [section 1]; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed."

Section 9. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. 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 employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (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, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":
 - (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but
 - (ii) 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 ~~defined~~ *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 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 who is not an employee or worker in this state as defined in 39-71-118(10);

(w) employment of a person who is working under an independent contractor exemption certificate.

(3) (a) ~~A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a~~

~~member managed limited liability company who represents to the public that the person is an independent contractor. 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 but may apply to the department for an exemption from the Workers' Compensation Act unless the person has waived the rights and benefits of the Workers' Compensation Act and Occupational Disease Act of Montana by obtaining an independent contractor exemption certificate from the department pursuant to [section 1].~~

(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.

~~(b) The application must be made in accordance with the rules adopted by the department. There is a \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.~~

~~(e) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.~~

~~(d) The exemption, if approved, remains in effect for 2 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall submit a renewal application every 2 years. The renewal application and the \$17 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.~~

~~(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

~~(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.~~

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(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 10. Section 39-71-409, MCA, is amended to read:

"39-71-409. Waivers by employee invalid. ~~No~~ (1) An agreement by an employee to waive any rights under this chapter ~~for any injury to be received shall be~~ is not valid.

(2) (a) *A person who possesses and is working under a current independent contractor exemption certificate issued by the department waives all rights and benefits of the Workers' Compensation Act and Occupational Disease Act of Montana unless the person elects coverage pursuant to 39-71-401(3)(b).*

(b) *A waiver by reason of an independent contractor exemption certificate is an exception to the general prohibition of waiving the advantage of a statute enacted for a public reason as provided for in 1-3-204."*

Section 11. Section 39-71-415, MCA, is amended to read:

"39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee, ~~as defined in this chapter,~~ any party may, after mediation pursuant to department rules, petition the workers' compensation court for resolution of the dispute.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, ~~as defined in this chapter, and after mediating pursuant to department rule,~~ either party may, *after mediation pursuant to department rules,* petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) A dispute between an employer and the department involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution. A decision of the independent contractor central unit is final unless a party dissatisfied with the decision appeals by filing a petition for mediation within 10 days of service of the decision. ~~A party may petition the workers' compensation court for resolution of the dispute within 45 days of the mailing of the mediator's report with the workers' compensation court within 30 days of the mailing of the decision by the independent contractor central unit.~~ An appeal from the independent contractor central unit to the workers' compensation court brought pursuant to this part is a new proceeding.

~~(4) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401."~~

Section 12. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Beneficiary" ~~is as defined~~ *has the meaning provided* in 39-71-116.
- (2) "Child" ~~is as defined~~ *has the meaning provided* in 39-71-116.
- (3) "Department" means the department of labor and industry.
- (4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement"; but they have no reference to "permanent partial disability".
- (5) "Employee" ~~is as defined~~ *has the meaning provided* in 39-71-118.
- (6) "Employer" ~~is as defined~~ *has the meaning provided* in 39-71-117.
- (7) "Independent contractor" ~~is as defined in 39-71-120~~ *means a person who is working under an independent contractor exemption certificate provided for in [section 1].*
- (8) "Insurer" is as defined in 39-71-116.
- (9) "Invalid" is as defined in 39-71-116.
- (10) (a) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and 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.
- (11) "Order" is as defined in 39-71-116.
- (12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of ~~such~~ *employment in coal mines.*
- (13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules

of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116."

Section 13. Repealer. Sections 39-51-604 and 39-71-120, MCA, are repealed.

Section 14. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [sections 1 through 3].

Section 15. Effective date — applicability. [This act] is effective on passage and approval and applies to all applications and renewals for the independent contractor exemption certificate submitted to the department after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 449

[SB 146]

AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT; PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS; SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM; PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; CHANGING THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS; AMENDING SECTIONS

2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607, 41-3-1010, 41-3-1012, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201, 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 53-30-110, 61-8-731, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Short title. [Sections 1 through 4 and 6 through 14] may be cited as the “Montana Public Defender Act”.

Section 2. Definitions. As used in [sections 1 through 4 and 6 through 14], the following definitions apply:

(1) “Commission” means the public defender commission established in [section 5].

(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 [section 14] to be indigent and financially unable to retain private counsel.

(4) “Office” means the office of state public defender established in [section 7].

(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 [sections 1 through 4 and 6 through 14].

(6) “Statewide public defender system”, “state system”, or “system” means the system of public defender services established pursuant to [sections 1 through 4 and 6 through 14].

Section 3. Purpose. The purposes of [sections 1 through 4 and 6 through 14] are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests; and

(5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner.

Section 4. Statewide system — structure and scope of services — assignment of counsel at public expense. (1) There is a statewide public defender system, which must deliver public defender services in all courts in

this state. 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 [section 11], 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 [section 3].

(3) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the office makes appropriate assignments in a timely manner.

(4) Beginning July 1, 2006, a court may order the office to assign counsel under [sections 1 through 4 and 6 through 14] 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 [section 14], 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 [section 15];

(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 [section 15];

(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 [section 12] to provide public defender services under [sections 1 through 4 and 6 through 14] 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 5. Public defender commission. (1) There is a public defender commission.

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of [sections 1 through 4 and 6 through 14] or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(a) the commission and chief public defender shall hire their own staff, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(b) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(b) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in [section 7], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members.

Section 6. Commission — duties — report — rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to [sections 1 through 4 and 6 through 14], the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in [section 7], appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public 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 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;

(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 [sections 1 through 4 and 6 through 14]; 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;

(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, identified by region, court, and case type;

(h) the annual caseload and workload of each public 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 7. Office of state public defender — personnel — compensation — expenses. (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 and to implement the provisions of [sections 1 through 4 and 6 through 14], 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) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in [section 10];

(v) deputy public defenders, as provided in [section 11]; and

(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) Beginning July 1, 2006, 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 [section 13].

(8) 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.

Section 8. Chief public defender — duties. In addition to the duties provided in [section 7], the chief public defender shall:

(1) act as secretary to the commission and provide administrative staff support to the commission;

(2) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to [sections 1 through 4 and 6 through 14];

(3) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;

(4) establish processes and procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(5) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(6) establish administrative management procedures for regional offices;

(7) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

(8) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(9) establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

(10) establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(11) maintain a minimum client caseload, as determined by the commission;

(12) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and

(13) perform all other duties assigned by the commission pursuant to [sections 1 through 4 and 6 through 14].

Section 9. 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) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office 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 [section 8(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 [section 12] and as authorized by the chief public defender according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(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; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender.

Section 10. Training program — coordinator. (1) There is within the office a position of training coordinator for public defenders.

(2) The chief public defender shall appoint the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender;

(e) apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and

(f) perform other duties assigned by the chief public defender.

Section 11. Regional offices — deputy public defenders — office space. (1) Beginning July 1, 2006, the chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to [section 4(2)].

(2) Each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of [section 8(7)];

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) contract for services as provided in [section 12] and authorized by the chief public defender according to the strategic plan approved by the commission;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission and chief public defender for the region;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office and may not be considered a county or city obligation.

Section 12. 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.

(2) Beginning July 1, 2006, the state 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. 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 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 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 services and for others contracted to provide nonattorney services.

Section 13. 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 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 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.

Section 14. Eligibility — determination of indigence — rules. (1) (a) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

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

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

(d) Any determination pursuant to this section is subject to the review and approval of the court.

(2) (a) An applicant who is eligible for a public defender only because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission.

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

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

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

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

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

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

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

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

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

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

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section.

Section 15. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child, youth, or guardian ad litem involved in a proceeding under a petition filed pursuant to 41-3-422; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) Beginning July 1, 2006, the court's action pursuant to subsection (2) must be to order the office of state public defender, provided for in [section 7], to immediately assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], pending a determination of eligibility pursuant to [section 14].

Section 16. 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, [sections 1 through 4 and 6 through 14], and the employees in the positions listed in [section 7(3)(a)], who are appointed by the chief public defender.*”

Section 17. Section 3-5-511, MCA, is amended to read:

“3-5-511. Procedure in reference to witnesses’ Witnesses’ warrants — state reimbursement. (1) The witnesses in criminal actions, *witnesses called by a public defender, as defined in [section 2], and witnesses called in a grand jury proceeding* shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due *pursuant to Title 26, chapter 2, part 5, and 46-15-116.*

(3) The state shall reimburse the clerk for the amount specified in the warrant as ~~provided in 3-5-901 and 3-5-902~~ *follows:*

(a) *if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or*

(b) *if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in [section 7].”*

Section 18. Section 3-5-604, MCA, is amended to read:

“3-5-604. Court reporters — transcript of proceedings — costs. (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party’s attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy, *except as otherwise provided in this section.*

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) (a) If the judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the ~~state~~ *office of court administrator* as provided in 3-5-901.

(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter’s actual cost of preparation may be paid by the county or the office of the attorney general.

~~(4)~~(c) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(d) In civil cases, all transcripts required by the county must be furnished, and only the reporter’s actual costs of preparation may be paid by the county.

~~(5)(4)~~ (a) If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript a public defender, as defined in [section 2], requests a transcript, ~~it~~ the transcript must be furnished to the party public defender and paid for by the state office of public defender, as provided in ~~3-5-901~~ [section 7].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.”

Section 19. Section 3-5-901, MCA, is amended to read:

“3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the state office of court administrator shall fund ~~all~~ all district court costs, except as provided in subsection ~~(4)~~ (3). These costs include ~~but are not limited to~~ but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:-

(i) fees for transcripts of proceedings, as provided in 3-5-604, ~~expenses for indigent defense that are paid under contract or at an hourly rate, and expenses for psychiatric examinations;~~

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric evaluation under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4)(a)(i) and (4)(a)(iii); and

(v) for a psychiatric evaluation under 46-14-221, the cost of the examination and other associated expenses, as provided in 46-14-221(5);

(c) except as provided in [section 7(5)], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in [section 7(5)], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in [section 7(5)], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a

youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

~~(f) in involuntary commitment cases pursuant to 53-21-121, reasonable compensation for services and related expenses for counsel appointed by the court;~~

(f) except as provided in [section 7(5)], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) *except as provided in [section 7(5)],* all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, ~~but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125;~~ and

(j) costs *associated with the operation and maintenance* of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5, ~~and the costs of providing youth court office, courtroom, and other space as provided in 3-1-125.~~

~~(2) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund and directly pay the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.~~

~~(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1)~~

(2) If a cost is not paid directly by the office of court administrator, the state county shall pay the cost and the office of court administrator shall reimburse counties, the county within 30 days of receipt of a claim, for the following:

~~(a) in district court criminal cases:~~

~~(i) expenses for indigent defense that are not paid under subsection (1)(b);~~

~~(ii) juror fees and necessary expenses; and~~

~~(iii) witness fees and necessary expenses as provided in 46-15-116;~~

~~(b) in proceedings under subsection (1)(e):~~

- ~~(i) expenses for appointed counsel for the youth; and~~
 - ~~(ii) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and~~
 - ~~(c) costs of juror and witness fees and witness expenses before a grand jury.~~
- ~~(4)(3)~~ For the purposes of subsection (1), district court costs *paid by the office of court administrator* do not include:
- ~~(a) one-half of the salaries of county attorneys;~~
 - ~~(b) salaries of deputy county attorneys;~~
 - ~~(c) salaries of employees and expenses of the offices of county attorneys;~~
 - ~~(4)(a)~~ costs for clerks of district court and employees and expenses of the offices of the clerks of district court;
 - ~~(4)(b)~~ costs of providing and maintaining district court office space; or
 - ~~(4)(c)~~ charges incurred against a county by virtue of any provision of Title 7 or 46.”

Section 20. Section 7-6-2426, MCA, is amended to read:

“7-6-2426. Enumeration of county charges. (1) The following are county charges:

- (a) charges incurred against the county by virtue of any provision of this title;
 - (b) one-half of the salary of the county attorney and all expenses necessarily incurred by the county attorney in criminal cases arising within the county, except as provided in subsection (2);
 - (c) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;
 - (d) the board of prisoners confined in jail;
 - (e) the accounts of the coroner of the county for services that are provided by law;
 - (f) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;
 - (g) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;
 - (h) the contingent expenses necessarily incurred for the use and benefit of the county;
 - (i) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.
- (2) The costs of subsection (1)(b) arising from the criminal prosecution of escape or of an offense committed in the state prison must be paid ~~by the department of corrections~~ as provided in 53-30-110.”

Section 21. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection, *as adjusted pursuant to*

subsection (3)(a)(i), is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

- (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;
- (b) vehicle and boat taxes and fees pursuant to:
 - (i) Title 23, chapter 2, part 5;
 - (ii) Title 23, chapter 2, part 6;
 - (iii) Title 23, chapter 2, part 8;
 - (iv) 61-3-317;
 - (v) 61-3-321;
 - (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
 - (vii) Title 61, chapter 3, part 7;
 - (viii) 5% of the fees collected under 61-10-122;
 - (ix) 61-10-130;
 - (x) 61-10-148; and
 - (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
- (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
- (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
- (h) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
- (i) late filing fees pursuant to 61-3-220;
- (j) title and registration fees pursuant to 61-3-203;
- (k) veterans' cemetery license plate fees pursuant to 61-3-459;
- (l) county personalized license plate fees pursuant to 61-3-406;
- (m) special mobile equipment fees pursuant to 61-3-431;

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

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

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

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ *The* base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ *By* October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year ~~2004~~ *2007* to determine the fiscal year ~~2004~~ *2007* entitlement share pool ~~payments~~, the department shall ~~add to~~ *subtract from* the fiscal year ~~2003~~ *2006* entitlement share pool ~~payments~~ the fiscal year ~~2003~~ amount of revenue actually distributed to the county from the ~~25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)~~ *following amounts:*

<i>Beaverhead</i>	\$6,972
<i>Big Horn</i>	\$52,551
<i>Blaine</i>	\$13,625
<i>Broadwater</i>	\$2,564
<i>Carbon</i>	\$11,537
<i>Carter</i>	\$407
<i>Cascade</i>	\$157,151
<i>Chouteau</i>	\$3,536
<i>Custer</i>	\$7,011
<i>Daniels</i>	\$143
<i>Dawson</i>	\$3,893
<i>Fallon</i>	\$1,803
<i>Fergus</i>	\$9,324
<i>Flathead</i>	\$33,655
<i>Gallatin</i>	\$222,029

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<i>Garfield</i>		\$91
<i>Glacier</i>		\$3,035
<i>Golden Valley</i>		\$2,282
<i>Granite</i>		\$4,554
<i>Hill</i>		\$31,740
<i>Jefferson</i>		\$5,700
<i>Judith Basin</i>		\$1,487
<i>Lake</i>		\$38,314
<i>Lewis and Clark</i>		\$247,886
<i>Liberty</i>		\$152
<i>Lincoln</i>		\$3,759
<i>Madison</i>		\$8,805
<i>McCone</i>		\$1,651
<i>Meagher</i>		\$2,722
<i>Mineral</i>		\$2,361
<i>Missoula</i>		\$172,600
<i>Musselshell</i>		\$23,275
<i>Park</i>		\$6,582
<i>Petroleum</i>		\$36
<i>Phillips</i>		\$653
<i>Pondera</i>		\$10,270
<i>Powder River</i>		\$848
<i>Powell</i>		\$5,146
<i>Prairie</i>		\$717
<i>Ravalli</i>		\$93,090
<i>Richland</i>		\$3,833
<i>Roosevelt</i>		\$9,526
<i>Rosebud</i>		\$19,971
<i>Sanders</i>		\$30,712
<i>Sheridan</i>		\$271
<i>Stillwater</i>		\$12,117
<i>Sweet Grass</i>		\$2,463
<i>Teton</i>		\$5,560
<i>Toole</i>		\$7,113
<i>Treasure</i>		\$54
<i>Valley</i>		\$6,899
<i>Wheatland</i>		\$918
<i>Wibaux</i>		\$72
<i>Yellowstone</i>		\$266,644

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<i>Anaconda-Deer Lodge</i>		\$20,707
<i>Butte-Silver Bow</i>		\$53,057
<i>Alberton</i>		\$675
<i>Bainville</i>		\$258
<i>Baker</i>		\$2,828
<i>Bearcreek</i>		\$143
<i>Belgrade</i>		\$11,704
<i>Belt</i>		\$1,056
<i>Big Sandy</i>		\$1,130
<i>Big Timber</i>		\$2,910
<i>Billings</i>		\$163,499
<i>Boulder</i>		\$2,340
<i>Bozeman</i>		\$52,805
<i>Bridger</i>		\$1,303
<i>Broadus</i>		\$766
<i>Broadview</i>		\$258
<i>Brockton</i>		\$414
<i>Browning</i>		\$1,830
<i>Cascade</i>		\$1,374
<i>Chester</i>		\$1,430
<i>Chinook</i>		\$2,275
<i>Choteau</i>		\$3,050
<i>Circle</i>		\$1,018
<i>Clyde Park</i>		\$572
<i>Colstrip</i>		\$4,090
<i>Columbia Falls</i>		6,805
<i>Columbus</i>		\$3,245
<i>Conrad</i>		\$4,562
<i>Culbertson</i>		\$1,216
<i>Cut Bank</i>		\$5,316
<i>Darby</i>		\$1,348
<i>Deer Lodge</i>		\$5,708
<i>Denton</i>		\$503
<i>Dillon</i>		\$6,928
<i>Dodson</i>		\$194
<i>Drummond</i>		\$561
<i>Dutton</i>		\$661
<i>East Helena</i>		\$2,888
<i>Ekalaka</i>		\$689

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	<i>Ennis</i>	\$1,518
	<i>Eureka</i>	\$1,733
	<i>Fairfield</i>	\$1,120
	<i>Fairview</i>	\$1,152
	<i>Flaxville</i>	\$143
	<i>Forsyth</i>	\$3,286
	<i>Fort Benton</i>	\$2,579
	<i>Fort Peck</i>	\$393
	<i>Froid</i>	\$328
	<i>Fromberg</i>	\$855
	<i>Geraldine</i>	\$457
	<i>Glasgow</i>	\$5,361
	<i>Glendive</i>	\$8,099
	<i>Grass Range</i>	\$254
	<i>Great Falls</i>	\$96,422
	<i>Hamilton</i>	\$7,148
	<i>Hardin</i>	\$5,920
	<i>Harlem</i>	\$1,422
	<i>Harlowton</i>	\$1,678
	<i>Havre</i>	\$16,223
	<i>Helena</i>	\$45,877
	<i>Hingham</i>	\$263
	<i>Hobson</i>	\$397
	<i>Hot Springs</i>	\$912
	<i>Hysham</i>	\$482
	<i>Ismay</i>	\$43
	<i>Joliet</i>	\$1,006
	<i>Jordan</i>	\$606
	<i>Judith Gap</i>	\$263
	<i>Kalispell</i>	\$28,144
	<i>Kevin</i>	\$304
	<i>Laurel</i>	\$10,804
	<i>Lavina</i>	\$361
	<i>Lewistown</i>	\$10,170
	<i>Libby</i>	\$4,475
	<i>Lima</i>	\$397
	<i>Livingston</i>	\$12,145
	<i>Lodge Grass</i>	\$889
	<i>Malta</i>	\$3,389

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<i>Manhattan</i>		\$2,485
<i>Medicine Lake</i>		\$410
<i>Melstone</i>		\$234
<i>Miles City</i>		\$14,152
<i>Missoula</i>		\$104,264
<i>Moore</i>		\$319
<i>Nashua</i>		\$536
<i>Neihart</i>		\$149
<i>Opheim</i>		\$180
<i>Outlook</i>		\$125
<i>Philipsburg</i>		\$1,612
<i>Pinesdale</i>		\$1,413
<i>Plains</i>		\$2,007
<i>Plentywood</i>		\$3,185
<i>Plevna</i>		\$225
<i>Polson</i>		\$7,722
<i>Poplar</i>		\$1,544
<i>Red Lodge</i>		\$3,903
<i>Rexford</i>		\$263
<i>Richey</i>		\$309
<i>Ronan</i>		\$3,262
<i>Roundup</i>		\$3,280
<i>Ryegate</i>		\$465
<i>Saco</i>		\$354
<i>Scobey</i>		\$1,798
<i>Shelby</i>		\$5,677
<i>Sheridan</i>		\$1,150
<i>Sidney</i>		\$7,747
<i>Stanford</i>		\$737
<i>Stevensville</i>		\$3,063
<i>St. Ignatius</i>		\$1,367
<i>Sunburst</i>		\$709
<i>Superior</i>		\$1,521
<i>Terry</i>		\$1,011
<i>Thompson Falls</i>		\$2,272
<i>Three Forks</i>		\$3,130
<i>Townsend</i>		\$3,286
<i>Troy</i>		\$1,654
<i>Twin Bridges</i>		\$695

<i>Valier</i>	\$817
<i>Virginia City</i>	\$223
<i>Walkerville</i>	\$1,183
<i>West Yellowstone</i>	\$2,083
<i>Westby</i>	\$263
<i>White Sulphur</i>	\$1,734
<i>Whitefish</i>	\$9,932
<i>Whitehall</i>	\$1,889
<i>Wibaux</i>	\$893
<i>Winifred</i>	\$259
<i>Winnett</i>	\$314
<i>Wolf Point</i>	\$4,497.

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) ~~For fiscal year 2004 and subsequent fiscal years, the~~ *The* entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the

revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis ~~beginning September 15, 2001.~~

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the~~ *The* growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

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

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

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

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

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

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

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

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

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

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

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

~~(c) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

Missoula County	Airport Industrial	\$4,812
Silver Bow	Ramsay Industrial	597,594;

~~(ii) for fiscal years 2004 and 2005:~~

Missoula County	Airport Industrial	\$2,406
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~~Silver Bow~~ ~~Ramsay Industrial~~ ~~298,797; and~~

~~(iii) \$0 for all succeeding fiscal years.~~

~~(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.~~

~~(e) One half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.~~

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

~~(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.~~

~~(9)(8)~~ (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

~~(10)(9)~~ A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

~~(11)(10)~~ When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(12)(11)~~ A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(13)(12)~~ A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 22. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or

services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction;

(h) a claims adjuster; or

(i) a court reporter appointed as an independent contractor under 3-5-601.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(8) *This chapter does not apply to contracting under [section 12] of the Montana Public Defender Act.*

Section 23. Section 26-2-501, MCA, is amended to read:

“26-2-501. Witnesses in courts of record and before certain court officers. (1) ~~Witness~~ *Except as provided in 26-2-505 and subsection (2) of this section, witness fees are as follows:*

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, \$10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, ~~no~~ *an* officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana ~~shall~~ *may not* receive any per diem when testifying in a criminal proceeding, and ~~no~~ *a* witness ~~shall~~ *may not* receive fees in ~~any~~ more than one criminal case on the same day.”

Section 24. Section 26-2-506, MCA, is amended to read:

“26-2-506. Fees paid by party subpoenaing in civil actions — exceptions. ~~The~~ (1) *Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused ~~him~~ the witness to be subpoenaed.*

(2) (a) *When a witness is subpoenaed by a public defender, as defined in [section 2], the fees and expenses must be paid by the office of state public defender as provided in [section 7(5)].*

(b) *In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.*

(c) *In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in [section 2], but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901.”*

Section 25. Section 26-2-508, MCA, is amended to read:

“26-2-508. Witnesses ~~on behalf of~~ for state, ~~or~~ county, or public defender — advance payment not required. The attorney general, ~~or~~ any county attorney, *or any public defender, as defined in [section 2], is authorized to cause subpoenas to be issued and compel the attendance of witnesses ~~on behalf of the state or county~~ without paying or tendering fees in advance to either officers or witnesses, and ~~any~~ A witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.”*

Section 26. Section 26-2-510, MCA, is amended to read:

“26-2-510. Application of sections exempting from advance payment. The provisions of 26-2-508 and 26-2-509 ~~shall~~ extend to all actions and proceedings brought in the name of the attorney general, ~~or~~ any other person or persons for the benefit of the state or county, *or any other person or persons for the benefit of a public defender, as defined in [section 2].”*

Section 27. Section 40-5-236, MCA, is amended to read:

“40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results specifically requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced

at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of parental responsibility and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys ~~appointed~~ assigned under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

Section 28. Section 40-6-119, MCA, is amended to read:

"40-6-119. Right to counsel — ~~payment of counsel fees and costs — free transcript on appeal.~~ (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall ~~appoint~~ order the office of state public defender, pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to assign counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees ~~of counsel,~~ for experts, and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in proportions and at times determined by the court.

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal. *Transcript fees must be paid as provided in 3-5-604(4).*"

Section 29. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in

subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's ~~court-appointed~~ assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal

substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 30. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall ~~appoint~~ *immediately provide for the appointment or assignment of an attorney as provided for in [section 15]* to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to

appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

~~(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.~~

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in [section 15].

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, *pursuant to [section 15]*, to request the appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 31. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. ~~If~~ *If* an indigent parent is not already represented by counsel, *the court shall immediately provide for the appointment or assignment of counsel must be appointed by the court at the time that a request is made for a determination under this subsection to represent the indigent parent in accordance with the provisions of [section 15].* A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 32. 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) 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, 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. 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 [section 15]*. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(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 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."

Section 33. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination — separate hearing — ~~right to counsel~~ — no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.~~

~~(5)~~(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any *appointed or assigned* counsel requested by the *minor* parent.

~~(6)~~(5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 34. Section 41-3-1010, MCA, is amended to read:

“41-3-1010. Review — scope — procedures — immunity. (1) (a) The board shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

- (i) the safety of the child;
 - (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
 - (iii) whether caseworkers have diligently provided services;
 - (iv) whether appropriate services have been available to the child and family on a timely basis; and
 - (v) the results of intervention.
- (b) The board may review the case of a child who remains in or returns to the child’s home and for whom the department retains legal custody.

(2) The review must take place at times set by the board. The time limit must comply with the Adoption and Safe Families Act of 1997.

(3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child’s attorney *or the child’s assigned attorney*, the guardian ad litem, the court-appointed ~~attorney~~ or special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the child’s tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:

- (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;
- (b) the continuing need for the placement and the appropriateness and safety of the placement;
- (c) compliance with the case plan;
- (d) the progress that has been made toward alleviating the need for placement;
- (e) a likely date by which the child may be returned home or placed for adoption;
- (f) other problems, solutions, or alternatives that the board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.

(8) The board may hold joint or separate reviews for groups of siblings.

(9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, childrens' attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

Section 35. Section 41-3-1012, MCA, is amended to read:

"41-3-1012. Presence of employees and participants at reviews and deliberations of board. (1) Unless excused from doing so by the board, the department and any other agency directly responsible for the care and placement of the child shall require the presence of employees having knowledge of the case at board reviews.

(2) The board may require the presence of specific employees of the department or any other agency or other persons at board reviews. If an employee fails to be present at the review, the board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the board.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney *or the child's assigned attorney*, the guardian ad litem, the court-appointed ~~attorney~~ or special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board.

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board member or staff, the board members and board staff must be considered public servants as defined in 45-2-101.

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

(a) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.

(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.

(a)(c) "Presence" includes telephone participation, except that a representative of the department knowledgeable about the case at the time of the review must be physically present if required.

~~(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.~~

~~(c) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance."~~

Section 36. Section 41-5-111, MCA, is amended to read:

~~"41-5-111. Court costs and expenses. The following expenses must be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:~~

~~(1) reasonable compensation Compensation for services and related expenses for counsel appointed by the court assigned for a party must be paid by the office of state public defender provided for in [section 7].;~~

~~(2) the expenses of Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other like witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for by law in 26-2-506.;~~

~~(3) reasonable Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.;~~ and

~~(4) cost of Costs for transcripts and printing briefs on appeal must be paid as provided for in 3-5-604."~~

Section 37. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel — assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in [section 7], to assign counsel ~~must be appointed~~ for the youth if the parents or guardian and the youth are unable to provide counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], unless the right to ~~appointed~~ counsel is waived by the youth and the parents or

guardian. Neither the youth nor the youth's parents or guardian may waive *the right to counsel* after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 38. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent — separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) *If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in [section 7], to assign counsel to represent the minor parent.*"

Section 39. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign counsel.*

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 40. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel, and must be asked if the aid of counsel is desired.

(2) If the defendant desires *assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, is unable to employ counsel, and is entitled to have counsel assigned,* the court shall *order the office of state public defender, provided for in [section 7], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of [section 14].*

~~(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:~~

~~(a) the offense charged is a felony;~~

~~(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or~~

~~(c) the interests of justice would be served by assignment."~~

Section 41. Section 46-8-104, MCA, is amended to read:

“46-8-104. Appointment Assignment of counsel after trial. Any court of record may order *the office of state public defender, provided for in [section 7],* to assign counsel, *subject to the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14],* to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if ~~he~~ *the defendant, petitioner, or appellant* desires counsel and is unable to employ counsel.”

Section 42. Section 46-8-113, MCA, is amended to read:

“46-8-113. Payment for court-appointed counsel by defendant for assigned counsel. (1) ~~The~~ *As part of or as a condition under a sentence imposed under the provisions of this title, the court* may require a convicted defendant to pay the costs of ~~court-appointed~~ *assigned* counsel ~~as a part of or a condition under the sentence imposed as provided in Title 46 assigned to represent the defendant.~~

(2) Costs must be limited to ~~reasonable compensation and~~ costs incurred by the ~~court-appointed~~ *office of state public defender, provided for in [section 7], for providing the defendant with counsel* in the criminal proceeding.

(3) The court may not sentence a defendant to pay the costs ~~of court-appointed~~ *for assigned* counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

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

Section 43. Section 46-8-114, MCA, is amended to read:

“46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of ~~court-appointed~~ *assigned* counsel *pursuant to 46-8-113,* the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the ~~clerk of district court.~~ *The clerk of district court shall forward the payments to the department of revenue for deposit in the state general fund office of state public defender, provided for in [section 7], and deposited in the account established in [section 13].*”

Section 44. Section 46-8-115, MCA, is amended to read:

“46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of ~~court-appointed~~ *assigned* counsel defaults in payment of the costs or of any installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of ~~court-appointed~~ *assigned* counsel must be set forth in the judgment and may not

exceed 1 day for each \$25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or in part.

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.”

Section 45. Section 46-12-210, MCA, is amended to read:

“46-12-210. Advice to defendant. (1) Before accepting a plea of guilty or nolo contendere, the court shall determine that the defendant understands the following:

- (a) (i) the nature of the charge for which the plea is offered;
- (ii) the mandatory minimum penalty provided by law, if any;
- (iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and
- (iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;
- (b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, ~~one an attorney~~ will be ~~appointed~~ *assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]*, to represent the defendant;
- (c) that the defendant has the right:
 - (i) to plead not guilty or to persist in that plea if it has already been made;
 - (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;
 - (iii) to confront and cross-examine witnesses against the defendant; and
 - (iv) not to be compelled to reveal personally incriminating information;
- (d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;
- (e) that if the defendant’s plea of guilty or nolo contendere is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and
- (f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1).”

Section 46. Section 46-14-202, MCA, is amended to read:

“46-14-202. Examination of defendant. (1) If the defendant or the defendant’s counsel files a written motion requesting an examination or if the issue of the defendant’s fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant’s mental condition.

(2) ~~The~~ *The* court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

~~(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the state as provided in 3-5-901.~~

(4) (a) *The costs incurred for an examination ordered under subsection (2) must be paid as follows:*

(i) *if the issue of the defendant’s fitness to proceed was raised by the district court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the office of court administrator, as provided in 3-5-901;*

(ii) *if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was requested by the defendant or the defendant’s counsel, the cost of the examination and other associated expenses must be paid by the office of state public defender;*

(iii) *if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the office of court administrator and the office of state public defender.*

(b) *For purposes of this subsection (4), “other associated expenses” means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:*

(i) *the expenses of transporting the defendant from the place of detention to the place where the examination is performed and returning the defendant to*

detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and

(iii) medical costs, including medical and dental care, including costs of medication.”

Section 47. Section 46-14-221, MCA, is amended to read:

“46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant’s fitness to proceed may be raised by the court, by the defendant or the defendant’s counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant’s counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician’s prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant’s fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ facility of the department of public health and human services, of keeping the defendant there, and of bringing the defendant back are payable by the ~~state~~ office of court administrator as a district court expense as provided for in 3-5-901.”

Section 48. Section 46-15-115, MCA, is amended to read:

“46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of ~~the~~ a defendant *acting pro se* and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent *but is acting pro se and is not represented by a public defender, as defined in [section 2]*, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) *If the defendant is represented by a public defender, as defined in [section 2], witness costs must be paid by the office of state public defender as provided for in [section 7].”*

Section 49. Section 46-15-116, MCA, is amended to read:

“46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by Title 26, chapter 2, part 5, *except as otherwise provided in this section.*

(2) The court, on motion by either party, may allow additional fees for expert witnesses.

~~(2)~~(3) The court may determine the reasonable and necessary expenses of subpoenaed witnesses *for an indigent defendant not represented by a public defender, as defined in [section 2]*, and order the clerk of court to pay the expenses.

~~(3)~~(4) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by ~~statutory enactment~~ *statute* required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

~~(4)~~(5) The witness fees, costs, and expenses must be paid ~~by the state according to procedures required by the supreme court administrator under 3-5-902 as provided in 26-2-506.”~~

Section 50. Section 46-17-203, MCA, is amended to read:

“46-17-203. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14],* hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 51. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional and sentencing policy. (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of ~~court-appointed~~ assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles."

Section 52. Section 46-18-201, MCA, is amended to read:

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

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

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

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

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

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

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

(b) payment of costs, as provided in 46-18-232, or payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

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

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

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

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

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

(h) any combination of subsections (2) through (3)(g).

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

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

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

(c) conditions for probation;

(d) payment of the costs of confinement;

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

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

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

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

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

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

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

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

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

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

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

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 53. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign* counsel for a petitioner who

qualifies for the ~~appointment~~ assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, [sections 1 through 4 and 6 through 14].

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, *as defined in [section 2]*, and wishes to file a petition under this chapter, the court will ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of ~~appointed~~ assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) ~~appoint~~ order the office of state public defender to assign counsel to represent the person if *pending a determination by the court finds office of state public defender that the person is indigent, as defined in [section 2], and that the person either has accepted the offer of appointment assigned counsel or is unable to competently decide whether to accept the offer of appointed assigned counsel;*

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the court finds that the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment ~~appointment~~ of counsel.

(c) ~~The court may not appoint counsel~~ The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the ~~appointment~~ assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is *determined not to be indigent at the time that the court's determination is made under subsection (3)(b) but thereafter becomes indigent at any subsequent stage of the proceedings*, the court shall ~~appoint~~ order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel ~~appointed~~ assigned pursuant to this subsection (3) must be paid ~~as provided in 46-8-201~~ by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and

any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed.”

Section 54. Section 50-20-212, MCA, is amended to read:

“50-20-212. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state.

(2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person’s own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to ~~court-appointed~~ *assigned* counsel and shall ~~provide the petitioner with~~ *order the office of state public defender, provided for in [section 7], to assign* counsel upon request.

(b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an investigation conducted pursuant to this subsection.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner’s initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

(a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.”

Section 55. Section 53-9-104, MCA, is amended to read:

“53-9-104. Powers and duties of office. (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to ~~pay the costs and attorney fees of court-appointed~~ *reimburse the office of state public defender, provided for in [section 7], for costs associated with providing assigned counsel* for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney ~~appointed~~ *assigned* for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant’s juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program.”

Section 56. Section 53-20-125, MCA, is amended to read:

“53-20-125. Outcome of screening — recommendation for commitment to residential facility — hearing. (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) At the request of the respondent, the respondent’s parents or guardian, or the responsible person, the court shall ~~appoint~~ *order the office of state public defender, provided for in [section 7], to assign* counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall ~~appoint~~ *order the office of state public defender to assign* counsel for the parents or guardian *pending a determination of indigence pursuant to [section 14].*

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

- (a) the respondent;
- (b) the respondent’s parents, guardian, or next of kin, if known;
- (c) the responsible person;
- (d) the respondent’s advocate, if any;
- (e) the county attorney;
- (f) the residential facility;
- (g) the attorney for the respondent, if any; and
- (h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent’s parents or guardian, the responsible person, the respondent’s advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of public health

and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team.”

Section 57. Section 53-21-112, MCA, is amended to read:

“53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;
- (b) a person licensed in this state to practice medicine; or
- (c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor’s parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. ~~Counsel must be appointed for the minor at~~ *At the minor’s request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in [section 7], to assign counsel for the minor.”*

Section 58. Section 53-21-116, MCA, is amended to read:

“53-21-116. Right to be present at hearing or trial — appointment assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present *and the right to counsel* at any hearing or trial. If the person is indigent *or if in the court’s discretion assignment of counsel is in the best interest of justice*, the judge shall

~~appoint order the office of state public defender, provided for in [section 7], to immediately assign~~ counsel to represent the person at either the hearing or the trial, or both, ~~and the counsel must be compensated pursuant to 3-5-901(1)(f)."~~

Section 59. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment — filing of — initial hearing on.

(1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) ~~If a judge is available, the~~ *The judge shall consider the petition, and if. If the judge finds no probable cause, it the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in [section 7], to immediately assign* counsel ~~must be immediately appointed~~ for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent ~~and in the confirmation of the appointment of the attorney.~~

(3) If a judge is not available in the county *in person*, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. ~~If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in [section 7], to immediately provide assigned counsel. The judge, through the clerk of court, may also order~~ ~~must also direct~~ that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the ~~appointment~~ *assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."*

Section 60. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics — rights. (1) A person may be committed to the custody of the department by the district court

upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. ~~The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county.~~ The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless

sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have *assigned* counsel ~~appointed by the court or provided by the court pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14],~~ if the person wants the assistance of counsel and is unable to obtain *private* counsel. If the court believes that the person needs the assistance of counsel, the court shall ~~require, by appointment if necessary, order the office of state public defender, provided for in [section 7], to assign~~ counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present.”

Section 61. Section 53-30-110, MCA, is amended to read:

“53-30-110. Expense of trial for offenses committed in prison. (1) Whenever a trial of any person takes place under any of the provisions of 45-7-306 and or whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner, ~~properly~~. *The statement must be certified by a district judge of the county.*

(2) The statement must be sent to the department of corrections for its approval. After ~~such~~ *the* approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held.

(3) *Public defender costs, if any, must be paid pursuant to the Montana Public Defender Act provided for in [sections 1 through 4 and 6 through 14].”*

Section 62. Section 61-8-731, MCA, is amended to read:

“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(4) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

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

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

(c) payment of costs of ~~court-appointed~~ *assigned* counsel as provided in 46-8-113;

(d) community service;

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

(f) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(e).

(5) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 63. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor ~~is to~~ *must* be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if ~~he~~ *the minor* is 14 ~~or more~~ years of age *or older*;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the ~~interest~~ *interests* of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, ~~it~~ *the court* may ~~appoint an attorney~~ *order the office of state public defender, provided for in [section 7], to*

assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose.

Section 64. Section 72-5-234, MCA, is amended to read:

“72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 or more years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interest interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may ~~appoint an attorney order the office of state public defender, provided for in [section 7], to assign counsel under the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.~~

Section 65. Section 72-5-315, MCA, is amended to read:

“72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in ~~his~~ *the incapacitated person's* welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of ~~his~~ *the person's* own choice or the court may, in the interest of justice, appoint an appropriate official or ~~attorney order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent him~~ *the person* in the proceeding. ~~The official or assigned counsel who shall have~~ *has* the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated ~~shall~~ *must* be examined by a physician appointed by the court who shall submit ~~his~~ *a* report in writing to the court and *must* be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that ~~he~~ *the person* will be detained or reside if the requested appointment is made and submit ~~his~~ *the visitor's* report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the

condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in ~~his~~ *the person's* affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon ~~his~~ *the person's* condition. ~~He~~ *The person* is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or ~~his~~ *the person's* counsel ~~so~~ requests it.”

Section 66. Section 72-5-322, MCA, is amended to read:

“72-5-322. Petition of guardian for treatment of ward. (1) If a guardian believes that the guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward against the ward's will for more than 72 hours.

(2) The ward is entitled to ~~an appointment~~ *the assignment* of counsel, *in accordance with the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]*, and a hearing along with all the other rights guaranteed to a person with a mental disorder and who requires commitment under 53-21-114, 53-21-115, 53-21-119, and 53-21-120.”

Section 67. Section 72-5-408, MCA, is amended to read:

“72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, ~~it the court may appoint an attorney order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court~~ *Counsel assigned* to represent a minor *also* has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of ~~his~~ *the person's* own choice, the court ~~must appoint a lawyer~~ *shall order the office of state public defender, provided for in [section 7], to assign counsel* to represent ~~him~~ *the person pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]. Assigned counsel who then* has the powers and duties of a guardian ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.”

Section 68. Implementation. (1) The governor shall appoint the members of the public defender commission established pursuant to [section 5] no later than July 1, 2005.

(2) The department of administration shall provide staff support to the commission beginning July 1, 2005, and continuing until the commission hires a chief public defender and until the chief public defender hires necessary staff for the commission and the office of state public defender.

(3) By December 31, 2005, the commission shall hire a chief public defender and issue any requests for proposals for consulting services and technical assistance that may be needed to help establish the office of state public defender provided in [section 7].

(4) Standards and procedures required to implement the provisions of [sections 1 through 4 and 6 through 14] must be established, and the office of state public defender must be opened by no later than July 1, 2006.

(5) During fiscal year 2006, a commission member is entitled to \$50 for each day that the member spends conducting the official business of the commission.

(6) The department of administration shall assist the commission in developing a public defender information technology system that utilizes existing resources as much as possible and that interfaces with state executive branch, judicial branch, and local computer systems to the extent necessary and practicable to ensure that data required to effectively manage public defender caseloads and track costs can be efficiently collected and analyzed.

Section 69. Transition — transfer of county and city employees to state employment — rights. (1) Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided for in [section 7]. Transferred employees become state employees on July 1, 2006.

(2) All transferred employees become subject to the state classification plan on July 1, 2006, except those specifically exempted under [section 7(2) and (3)(a)].

(3) The salary of transferred county or city employees on July 1, 2006, must be the same as it was on July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%.

(4) An employee's compensation may not be reduced as the result of the transfer to the state classification plan.

(5) This section does not preserve the right of any former county or city employee to any salary or compensation, including longevity benefits, that was not accrued and payable as of June 30, 2006.

(6) A transferred employee may elect to become a member of the state employee benefit plan beginning July 1, 2006, or remain on the employee's county or city benefit plan through the remainder of the plan year in effect on

June 30, 2006. For an employee who elects to remain on a county or city benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county or city benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

(7) Accumulated sick and vacation leave and years of service with a county or city must be transferred fully to the state and become an obligation of the state on July 1, 2006. On January 1, 2007, and on January 1, 2008, the counties and cities with office of public defender employees who are transferred to state employment by this section shall pay the state 12.5% of the sick leave accrual and 50% of vacation leave accrual for each employee who is transferred to state employment. The transferred employees shall retain their accumulated sick and vacation leave. Any liability for accumulated compensatory time of employees who are transferred from county or city employment to state employment under this section is not transferred to the state and remains an obligation of the county or city that employed the employee prior to the transfer, subject to federal law and the county's or city's personnel policies.

(8) A transferred employee who is not already covered by the public employees' retirement system provided in Title 19, chapter 3, becomes a new member of the public employees' retirement system on July 1, 2006, and is subject to the provisions of Title 19, chapter 3.

(9) A collective bargaining agreement in effect on July 1, 2006, may not be construed as binding on the state. However, transferred employees are entitled to organize and collectively bargain pursuant to Title 39, chapter 31.

Section 70. Transition of appellate defender commission and office.

(1) The terms of members of the appellate defender commission established in 2-15-1020 terminate on June 30, 2006, when that section is repealed.

(2) Commission staff in the office of appellate defender established pursuant to the Appellate Defender Act in 46-8-210 through 46-8-213 must be officially transferred to the office of state public defender established pursuant to [section 7]. The transfer is effective July 1, 2006, at which time the position of chief appellate defender becomes exempt from the classification and pay plan pursuant to 2-18-103 and [section 7(3)(a)(ii)]. The compensation and benefits of the chief appellate defender and other staff of the office of appellate defender may not be reduced as a result of this transfer and the chief appellate defender and other staff of the office of appellate defender remain entitled to all compensation, rights, and benefits accrued as of June 30, 2006.

(3) The appellate defender commission and the public defender commission shall work together to provide that the duties and responsibilities of the appellate defender commission and the caseload of the staff of the office of appellate defender are transferred to the public defender commission and office of state public defender in a manner that ensures continuity of services. On July 1, 2006, all work of the appellate defender commission must officially be transferred to the supervision of the public defender commission and the chief public defender.

(4) Subject to the provisions of [section 5], a member of the appellate defender commission may be appointed by the governor to simultaneously serve on the public defender commission and the appellate defender commission until the appellate defender commission terminates pursuant to this section. A member serving on both commissions simultaneously is entitled to the compensation provided for the public defender commission in [section 68(5)] when engaged in the official duties of the public defender commission, provided

that expenses paid pursuant to 2-18-501 through 2-18-503 may not be paid twice for the same period of time.

Section 71. Rights to property. (1) Subject to subsection (2), office equipment, computer equipment, furniture, and fixtures that are owned by a county or city and used by employees of a public defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the county or city and the state.

(2) (a) An employee of a county or city public defender office who becomes a state employee under [section 69] retains the right to use all property relating to the functions of the office and being used by the employee on June 30, 2006. The property includes records, office equipment, computer equipment, supplies, contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property. However, the employee may not use or divert money in a fund or account for a purpose other than as provided by law.

(b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used as provided in subsection (2)(a) and still owned by a county or city, the right to use the replaced property reverts to the county or city.

(3) This section does not apply to property owned by the federal government.

Section 72. Implementation — determination of actual costs — legislative audit — report. (1) The legislature's intent is to provide that:

(a) funding responsibilities for public defender services pursuant to [sections 1 through 4 and 6 through 14] will be shared by state and local government; and

(b) the counties, consolidated governments, and cities will pay their share of costs through a reduction in the county's, consolidated government's, or city's base entitlement share under 15-1-121.

(2) To fulfill the intent of subsection (1) for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, Flathead County, and Yellowstone County, an audit, by or at the direction of the legislative auditor, must be conducted on all actual costs for public defender services in district court and justice's court proceedings incurred from July 1, 1998, through June 30, 2004, for which records exist. The audit must separate the costs by expenditure category and distinguish between costs paid by a county and costs paid or reimbursed by the state.

(3) Each county audited under subsection (2) shall reimburse the legislative auditor for 50% of the cost of the audit for that county.

(4) By April 30, 2006, the results of the audit must be reported to the governor's budget office, the legislative audit committee, the legislative finance committee, and the law and justice interim committee.

(5) The law and justice interim committee shall prepare legislation to be introduced in the 2007 legislative session that will amend 15-1-121 to provide that the base entitlement share for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, Flathead County, and Yellowstone County is adjusted by an appropriate amount arrived at based on the audit and in consultation with the legislative finance committee, the legislative audit committee, representatives of the counties, the governor's office, the American civil liberties union, the attorney general's office, and all other interested and participating parties.

(6) (a) For the fiscal year beginning July 1, 2011, and every 5 years thereafter, the legislative fiscal analyst shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change in the amounts allocated to local governments under the provisions of 15-1-121, as amended in 2005, and the actual costs for public defender services in [this act] for the same time period.

(b) The results of the comparison must be presented to the governor, legislative finance committee, law and justice interim committee, and supreme court by September 1 of the following fiscal year.

(7) As used in this section:

(a) "actual costs" means all expenditures by a county for public defender services in justice court and all expenditures by a county for public defender services in district court that were not reimbursed by the office of court administrator pursuant to 3-5-901; and

(b) "public defender services" means all services and support associated with providing defendants in district court or justice court proceedings with assigned, appointed, or contracted attorneys, including:

(i) compensation;

(ii) personal expenses, including travel, meals, and lodging;

(iii) office operating costs, including rent, utilities, supplies, postage, copying, computer systems, and other office operating costs;

(iv) professional and paraprofessional support services, including services provided by investigators, paralegals, researchers, and secretaries;

(v) services required to support a defense, including transcripts, witnesses, and other support;

(vi) professional support, including professional education and training;

(vii) costs of psychiatric evaluations under 46-14-202 and 46-14-221, including the cost of examinations and other associated expenses; and

(viii) other services or support provided by the county to provide assigned, appointed, or contracted defense counsel in justice court and district court proceedings.

Section 73. Interim report. During fiscal year 2007, the public defender commission established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law and justice interim committee, legislative audit committee, and supreme court regarding the operation and administration of the statewide public defender system.

Section 74. Repealer. Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

Section 75. Codification instruction. (1) [Sections 1 through 4 and 6 through 14] are intended to be codified as a new title in the Montana Code Annotated.

(2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 5].

(3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 15].

Section 76. Directions to code commissioner. Whenever references to court-appointed counsel, court-appointed attorney, appointed counsel, or appointed attorney appear in legislation enacted by the 2005 legislature, the code commissioner is directed to change the references to the appropriate references to assigned counsel or assigned attorney.

Section 77. Coordination instruction. If [this act] is passed and approved and it includes a section that amends 15-1-121(3)(a)(i) and:

(1) if House Bill No. 223 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 223 is void;

(2) if House Bill No. 334 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 334 is void;

(3) if House Bill No. 671 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 671 is void; and

(4) if Senate Bill No. 67 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in Senate Bill No. 67 is void.

Section 78. 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 79. Three-fifths vote required. Because 15-1-121(3)(a)(i), as amended in this bill, reduces the amount of entitlement share payments, 15-1-121(9), as amended in this bill, requires a vote of three-fifths of the members of each house of the legislature for passage of the amendment of 15-1-121.

Section 80. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 17 through 19, 24 through 29, 34 through 67, and 74] are effective July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 450

[SB 261]

AN ACT REVISING THE PROCEDURES FOR DECLARING A MANUFACTURED HOME TO BE AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; REVISING THE PROCEDURES FOR REVERSING THE DECLARATION THAT A MANUFACTURED HOME IS AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; AMENDING SECTIONS 15-1-116 AND 70-1-106, MCA; AND REPEALING SECTION 15-1-117, MCA.

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

Section 1. Section 15-1-116, MCA, is amended to read:

“15-1-116. Manufactured home considered as improvement to real property — requirements. (1) A manufactured home ~~will~~ *must* be considered ~~for tax purposes~~ an improvement to real property *for tax purposes* if:

(a) the running gear is removed; ~~and~~

(b) the manufactured home is attached to a permanent foundation *so that it is no longer capable of being drawn over public highways and it is placed on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, it is placed on the land with the permission of the landowner; and*

(c) *a statement of intent declaring the manufactured home as an improvement to real property is recorded with the county clerk and recorder on a form furnished by the department of justice.*

(2) (a) To eliminate a manufacturer's certificate of origin properly assigned to an owner or a certificate of title of a manufactured home, an owner ~~may shall file record a~~ the statement of intent, *as provided in subsection (3) on a form furnished by the department of justice.*

(3)(b) The statement of intent must include:

(a)(i) the serial number of the manufactured home;

(b)(ii) the legal description of the real property to which the manufactured home has been permanently attached;

(c)(iii) a description of any security interests in the manufactured home; ~~and~~

(d)(iv) approval from all lienholders of the intent to eliminate the certificate of origin or certificate of title; and

(v) *an acknowledgment of the owner's signature.*

(4)(3) (a) ~~The owner shall present the owner shall record the statement of intent to in the office of the county treasurer clerk and recorder of the county in which the manufactured home real property is located, and the owner shall surrender the certificate of origin or certificate of title and a certified copy of the recorded statement of intent to the county treasurer. Upon payment~~ *Within 10 days of receipt of the fee required in 61-3-203, the county treasurer shall:*

(i) enter the transfer of interest on the electronic record of title;

(ii) issue the owner a transaction summary receipt; and

(iii) ~~forward the~~ *a certified copy of the statement of intent, a copy of the receipt for the fee required in 61-3-203, and the surrendered certificate of origin or certificate of title to the department of justice.*

(b) *The department of justice shall provide the owner with a statement that is in a recordable form, which the owner shall record, that the process of surrendering the certificate of origin or certificate of title has been completed.*

(c) ~~The county treasurer may not issue the~~ *a receipt for the fee referred to in subsection (3)(a) unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall remit the fee to the department for deposit in the state general fund.*

(4) ~~Upon the recording of the statement of intent and the statement of title acceptance provided for in subsection (3)(b) and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home complying with the provisions of [section 2].~~

(5) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and

by lending institutions in the same manner as any other residence that is classified as an improvement *to real property*.”

Section 2. Reversal of declaration that manufactured home is real property. (1) A manufactured home previously declared to be real property under the provisions of 15-1-116 must be considered as personal property for tax purposes if:

(a) the manufactured home is removed from its permanent foundation and running gear is attached so that it is capable of being moved over public highways; and

(b) the owner records a statement of reversal of declaration, on a form provided by the department of justice, with the county clerk and recorder of the county in which the manufactured home has been located and treated as real property.

(2) (a) In order to restore a certificate of title of a manufactured home, the owner shall file a statement of reversal of declaration as provided in subsection (3).

(b) The statement of reversal of declaration must include:

(i) the serial number of the manufactured home;

(ii) the legal description of the real property from which the manufactured home will be removed;

(iii) a description of any security interests in the manufactured home or real property from which it will be removed;

(iv) approval from all lienholders of the intent to restore the certificate of origin or certificate of title; and

(v) an acknowledgment of the owner's signature.

(3) (a) The statement of reversal of declaration must be presented to the county clerk and recorder of the county in which the manufactured home was treated as real property. The clerk and recorder shall forward a copy of the statement to the department of justice. The department of justice shall provide the owner with a restored certificate of origin or certificate of title.

(b) Within 5 days of receipt of the fee required in 61-3-203, the county treasurer shall:

(i) enter the transfer of interest on the electronic record of title;

(ii) issue the owner a transaction summary receipt; and

(iii) forward the statement of reversal of declaration to the department of justice.

(c) The county treasurer may not issue the transaction summary receipt unless all taxes, interest, and penalties on the real property have been paid.

(d) The department of justice shall provide to the owner a statement in recordable form, which the owner shall record, that the process of restoring the certificate of origin or certificate of title has been completed.

(4) A manufactured home may be physically removed from the real property on which it was located when it was treated as real property upon the owner's compliance with the provisions of subsections (1) through (3) and other applicable state law.

(5) A manufactured home that has been declared personal property in accordance with this section must be treated by the department and lending institutions in the same manner as any other residence that is classified as personal property.

Section 3. Section 70-1-106, MCA, is amended to read:

“70-1-106. Real property defined. Real or immovable property consists of:

- (1) land;
- (2) that which is affixed to land, *including a manufactured home declared an improvement to real property under 15-1-116*;
- (3) that which is incidental or appurtenant to land;
- (4) that which is immovable by law.”

Section 4. Repealer. Section 15-1-117, MCA, is repealed.

Section 5. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 2].

Approved April 28, 2005

CHAPTER NO. 451

[SB 292]

AN ACT GENERALLY REVISING LOCAL GOVERNMENT AND STATE FINANCE LAWS; CHANGING THE START OF THE PERIOD TO CONTEST THE VALIDITY OF CERTAIN BONDS; CLARIFYING THE LAWS RELATING TO LOCAL GOVERNMENT ISSUANCE OF BOND OR GRANT ANTICIPATION NOTES; PROVIDING A BOND COMMENCEMENT DATE FOR CERTAIN BONDS; PROVIDING THAT CERTAIN REFUNDING BONDS NEED NOT BE SUBJECT TO REDEMPTION AFTER ONE-HALF OF THE BOND'S TERM; CLARIFYING THE TERM "SERIAL BONDS"; AUTHORIZING THE SUBMISSION OF BIDS ELECTRONICALLY AT A PUBLIC SALE OF BONDS; CLARIFYING THAT VARIABLE RATE REFUNDING BONDS MAY BE ISSUED BY A LOCAL GOVERNING BODY; CLARIFYING THE PROTEST PERIOD FOR RURAL SPECIAL IMPROVEMENT DISTRICTS; CLARIFYING THE ISSUANCE OF REFUNDING BONDS FOR SPECIAL IMPROVEMENT DISTRICTS; AUTHORIZING DELINQUENT WATER SERVICE CHARGES TO BECOME LIENS UPON THE PROPERTY SERVED OR TO BE COLLECTED AS A DEBT OF THE PROPERTY OWNER; CLARIFYING THE AUTHORITY OF CITIES TO ISSUE SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; CLARIFYING THE SECURITY OF BONDS FOLLOWING THE DISSOLUTION OF A COUNTY PARK DISTRICT; CLARIFYING THE MAXIMUM INTEREST RATE ON SPECIAL ASSESSMENTS SECURING BONDS; CLARIFYING THE AUTHORITY OF IRRIGATION DISTRICTS AND DRAINAGE DISTRICTS TO LEVY TAXES AND ASSESSMENTS; AUTHORIZING THE POOLING OF SPECIAL IMPROVEMENT DISTRICT BONDS AND SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; AMENDING SECTIONS 7-7-104, 7-7-109, 7-7-2206, 7-7-2207, 7-7-2211, 7-7-2304, 7-7-4206, 7-7-4210, 7-7-4304, 7-7-4502, 7-12-2113,

7-12-2193, 7-12-4194, 7-13-4309, 7-14-4109, 7-16-2443, 17-5-103, 20-9-408, 20-9-410, AND 20-9-464, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-7-104, MCA, is amended to read:

“7-7-104. Limitation on action to test bond validity. ~~No~~ A local government general obligation bond of any issue, ~~whereof in which~~ the preliminary proceedings have been submitted to and approved by the attorney general, may *not* be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity ~~thereof of the bonds~~ is brought within 30 days after the date of ~~sale the adoption of the resolution calling for the sale of bonds of the local government.~~”

Section 2. Section 7-7-109, MCA, is amended to read:

“7-7-109. Definitions — sale of notes in anticipation of federal or state revenue or issuance of bonds. (1) As used in this section, the following definitions apply:

(a) “Bonds” means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) “Governing body” means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(c) (i) “Political subdivision” means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state.

(ii) The term does not include the state or any board, agency, or commission of the state.

(2) (a) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law ~~and~~ or the political subdivision has applied for and received a commitment for a grant or loan of state or federal funds ~~or has received a commitment from a person or entity to purchase bonds to aid in payment of costs incurred or to be incurred for the authorized purpose~~, its governing body may by resolution issue and sell, ~~notes~~ in anticipation of the receipt of the grant, loan, or bonds in an amount not exceeding the total amount of bonds authorized ~~and~~ or the total amount of the loan or grant that is committed, notes maturing within not more than 3 years from the date on which the notes are issued.

(b) The outstanding term of the notes issued under this section may not reduce the term of the bonds otherwise permitted by law. Before the notes are issued, the political subdivision must receive a written commitment ~~for a grant, loan, or bond purchase~~ for the purchase of the bonds or for the grant or loan in an amount that *in the aggregate* is not less than the principal amount of the notes and shall by resolution agree to fulfill any conditions of the commitment.

(3) The proceeds of the grant, loan, or bonds, when received, must be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) ~~(a) Any amount of the notes that cannot be paid at maturity from the proceeds of the grant, loan, or bond sale or from any other funds appropriated by the governing body for the purpose~~ *To the extent that proceeds described in subsection (3) are not sufficient to pay the notes and interest on those notes when due, the notes must be paid from any other funds that are legally available and appropriated by the governing body for that purpose.*

(b) If the notes are issued in anticipation of the issuance of bonds, any amount of the notes that cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a) must be paid from the proceeds of bonds to be issued and sold before the maturity date, or if

(c) If sufficient funds are not available for payment in full of the notes at maturity, the holders of the notes have the right to require the issuance of bonds in exchange for the notes, with the bonds maturing as amortization bonds, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes.

~~(d) If notes are validly issued under then-applicable~~ *then-applicable law in anticipation of the issuance of bonds, the political subdivision may issue bonds in a principal amount equal to the outstanding principal amount of the notes, regardless of any limitation in the then-applicable then-applicable law concerning the principal amount of the bonds.*

(e) If the notes are issued in anticipation of the receipt of a grant or other revenue source and cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a), the political subdivision may, to the extent otherwise authorized by law, issue bonds to provide for payment of those notes."

Section 3. Section 7-7-2206, MCA, is amended to read:

"7-7-2206. Term of general obligation bonds. (1) Bonds issued for any of the purposes designated in 7-7-2201(1) through (4) may not be for a longer term than 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2201(5) and (6) may not be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 may not be for a longer term than 20 years.

(4) The length of the term required must be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within the county as ascertained from the last-completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county shall from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the payments are due.

(5) For purposes of 7-7-2207 and this section, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies taxes to pay principal and interest on the bonds."

Section 4. Section 7-7-2207, MCA, is amended to read:

“7-7-2207. Redemption of bonds. ~~All~~ *Other than refunding bonds, all bonds issued for a longer term than 5 years shall must be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so the redemption option must be stated on the face of the bonds.*”

Section 5. Section 7-7-2211, MCA, is amended to read:

“7-7-2211. Serial bonds. The term “serial bonds”, as used in this part, means a bond issue payable in annual installments *of principal* commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing *or subject to mandatory sinking fund redemption* in each installment, *commencing with the installment payable in the fourth year after the date of issue*, not exceeding three times the principal amount of the bonds ~~maturing payable~~ in the immediately preceding installment.”

Section 6. Section 7-7-2304, MCA, is amended to read:

“7-7-2304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds that are to be refunded. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the bonds being refunded if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county. *Variable rate refunding bonds may also be issued if the board of county commissioners determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.*

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.”

Section 7. Section 7-7-4206, MCA, is amended to read:

“7-7-4206. Redemption of bonds. ~~All~~ *Other than refunding bonds, all bonds issued for a longer term than 5 years shall must be redeemable at the option of the city or town on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so the redemption option must be recited in the bonds.*”

Section 8. Section 7-7-4210, MCA, is amended to read:

“7-7-4210. Serial bonds. The term “serial bonds”, as used in this part, means a bond issue payable in annual installments *of principal* commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing *or subject to mandatory sinking fund redemption* in each installment, *commencing with the installment payable in the fourth year after the date of issue*, not exceeding three times the principal amount of the bonds ~~maturing payable~~ in the immediately preceding installment.”

Section 9. Section 7-7-4304, MCA, is amended to read:

“7-7-4304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the interest rate of the outstanding bonds to be refunded. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the bonds being refunded if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town. *Variable rate refunding bonds may also be issued if the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.*

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.”

Section 10. Section 7-7-4502, MCA, is amended to read:

“7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from the computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds being refunded, computed to their respective stated maturity dates. In determining whether the refunding bonds satisfy the savings requirements provided for in this section:

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), the average annual interest rate on the bonds being refunded must be calculated by reference to the interest

rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds being refunded if:

(a) they are issued to refund matured principal or interest for the payment of which revenue on hand is not sufficient;

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of the new bonds upon the revenue of the undertaking must be junior and subordinate to the lien of the outstanding bonds being refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding; ~~or~~

(c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality; or

(d) *the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.*"

Section 11. Section 7-12-2113, MCA, is amended to read:

"7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention ~~therefore~~ *that is* introduced and passed by the board.

(2) The board ~~shall be deemed to have acquired~~ *has* jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when ~~no sufficient~~ protests have *not* been delivered to the county clerk within ~~15~~ 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest ~~shall have~~ *has* been found by ~~said~~ the board to be insufficient or ~~shall have~~ *has* been overruled; or

(c) when a protest against ~~the extending of~~ the proposed district ~~shall have~~ *has* been heard and denied."

Section 12. Section 7-12-2193, MCA, is amended to read:

"7-12-2193. Refunding bonds. (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the board may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) *(i) the bonds to be refunded bear interest at a fixed rate or rates and the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded; or, if*

(ii) the refunding bonds are to bear interest at a variable rate and the board of county commissioners determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds; or

(iii) the bonds to be refunded bear interest at a variable rate; and the board determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the county or the board determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds;

(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due

prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.”

Section 13. Section 7-12-4194, MCA, is amended to read:

“7-12-4194. Refunding bonds. (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the council may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) (i) *the bonds to be refunded bear interest at a fixed rate or rates and the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded; or, if*

(ii) the refunding bonds are to bear interest at a variable rate and the city council determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds; or

(iii) the bonds to be refunded bear interest at a variable rate, and the council determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the city or the council determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over

the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds;

(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable that will not be satisfied by a loan from the revolving fund; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.”

Section 14. Section 7-13-4309, MCA, is amended to read:

“7-13-4309. Procedure to collect sewer or water charges. (1) Sewer or water charges must be collected by the treasurer.

(2) On or before July 7 of each year, notice must be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer *or water* service has been furnished prior to July 1 by the city or town. The notice must specify the assessment owing and in arrears at the time of giving notice. The notice must be in writing and must state the amount of arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance, and that unless the amount is paid within 30 days of the notice, the amount will be levied as a tax against the lot or parcel of real estate to which sewer *or water* service was furnished and for which payment is delinquent. The notice must also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including city court. The notice may be delivered to the owner personally or by letter addressed to the owner at the post-office address of the owner as shown in property tax records maintained by the department of revenue.

(3) (a) Except as provided in subsection (3)(b), at the time that the annual tax levy is certified to the county clerk, the city treasurer or town clerk shall certify and file with the department of revenue a list of all lots or parcels of real estate, giving the legal description of the lot or parcel, to the owners of which notices of arrearage in payments were given and which arrearage remains unpaid and stating the amount of the arrearage, including any penalty and interest. The department of revenue shall insert the amount as a tax against the lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall collect the delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer *or water* service was furnished and payment for which is delinquent.

(4) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town.”

Section 15. Section 7-14-4109, MCA, is amended to read:

“7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders ~~any such~~ a sidewalk, curb, or gutter constructed or ~~any such an~~ alley approach constructed or replaced, the order ~~shall must~~ be entered upon the minutes of the council and ~~shall must~~ name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

(3) After ~~the making of such~~ *issuing an order, the council shall provide a* written notice ~~thereof shall be given~~ to the owner or agent of the owner and to any purchaser under contract for deed of ~~such the~~ property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate, ~~in such manner as the council may direct~~.

(4) If the owner or agent of the owner of ~~such a~~ lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date of service of

the notice to cause ~~such~~ the sidewalk, curb, or gutter to be constructed or to cause ~~such~~ the alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost ~~thereof of those improvements~~, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which ~~the same is those improvements are~~ constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs shall be as is provided in 7-12-4181 through 7-12-4191.

(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction shall ~~must~~ be made by special warrants or bonds in ~~such a form as may be that is~~ prescribed by ordinance or resolution and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, ~~as appropriate, and the~~ The council may provide for the payment of interest annually or semiannually. *Except as otherwise expressly provided in 7-14-4110 and this section, the warrants or bonds that the city council authorizes may be issued subject to the terms and security provisions provided in Title 7, chapter 12, parts 41 and 42.*

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate pursuant to 17-5-102.”

Section 16. Section 7-16-2443, MCA, is amended to read:

“7-16-2443. Effect of dissolution. (1) If dissolution of a county park district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of filing of the order; or

(b) certification by the members of the county park commission that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) (a) If debts or obligations of the district remain unsatisfied after the dissolution of the district, the county governing body shall, subject to 15-10-420 and for as long as necessary, levy a fee on each household or a property tax on all taxable property that is in the territory formerly comprising the district in a sufficient amount to be used to discharge the debts of the former district.

(b) ~~If the electors of the district lowered the amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body may, subject to 15-10-420, levy a property tax not to exceed the levy authorized prior to the reduction of the levy for the discharge of the district's obligations if the obligations are bonds. If bonds of the district issued under 7-16-2433 are outstanding as of the date of dissolution of the district, the county governing body shall levy property taxes on all taxable property in the district to provide for the payment of the principal of and interest on those bonds in accordance with their terms and the terms of the resolution of the district authorizing the bonds.~~

(3) Any assets of the district remaining after all debts and obligations have been discharged become the property of the county.”

Section 17. Section 17-5-103, MCA, is amended to read:

“17-5-103. Rate of interest on special assessments determined by governing bodies — limitations. All special assessments levied by a political subdivision ~~shall must~~ bear interest at ~~such a rate or rates as its determined by the political subdivision’s governing body shall determine~~, except that ~~no such the rate shall may not~~ exceed the greater of 7% per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on ~~said the bonds plus an additional rate of interest, if any, on assessments authorized by statute to pay the principal and interest on those bonds.~~”

Section 18. Section 20-9-408, MCA, is amended to read:

“20-9-408. Definition of forms of bonds. As used in this part:

(1) “amortization bond” means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) “general obligation bonds” means bonds that pledge the full faith and credit and the taxing power of a school district;

(3) “impact aid revenue bonds” means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the account established in 20-9-514; and

(4) “serial bonds” means a bond issue payable in annual installments of *principal* commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or *subject to mandatory sinking fund redemption* in each installment, *commencing with the installment payable in the fourth year after the date of issue*, not exceeding three times the principal amount of the bonds ~~maturing payable~~ in the immediately preceding installment.”

Section 19. Section 20-9-410, MCA, is amended to read:

“20-9-410. Limitation of term and interest — timing for redemption.

(1) School district bonds may not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds may not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for the unexpired term. ~~All~~ *Other than refunding or redeeming bonds, all* bonds issued for a longer term than 5 years must be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and ~~it~~ *the redemption option* must be ~~so~~ stated on the face of the bonds. The interest must be as provided under 17-5-102 and must be payable semiannually.

(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.”

Section 20. Section 20-9-464, MCA, is amended to read:

“20-9-464. Statute of limitations — action to test validity. ~~No~~ A bond of any issue, ~~whereof in which~~ the preliminary proceedings have been submitted to and approved by the attorney general, ~~shall may not~~ be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of ~~said the~~ bonds, unless an action to contest the validity ~~thereof shall be~~ *of the bonds is* brought within 30 days after the date of ~~sale the adoption of the resolution calling for the sale of bonds of the school district.”~~

Section 21. Electronic submission of bids. Any bid for the purchase of bonds to be submitted in writing or as a sealed bid may also be submitted by facsimile or other electronic transmission or through an electronic bidding system, as authorized by the governing body in the resolution authorizing the sale of the bonds.

Section 22. Pooling of special improvement district bonds and sidewalk, curb, gutter, or alley approach bonds. (1) If the city council determines by resolution that the pooling of bonds of one or more special improvement districts of the city with bonds issued to finance sidewalks, curbs, gutters, or alley approaches under 7-14-4109 will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the city may issue bonds of the district or districts and those sidewalk, curb, gutter, or alley approach bonds combined in a single offering. These bonds must be secured by the special improvement district revolving fund of the city.

(2) The title of the bonds issued pursuant to this section must denote that bonds have been pooled and must refer to the numbers of the district or districts and the additional improvements to be financed. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district and a separate account for those additional improvements combined for financing purposes, into which accounts must be payable the assessments levied in each of the districts or in respect of those improvements.

Section 23. Codification instruction. (1) [Section 21] is intended to be codified as an integral part of Title 17, chapter 5, part 1, and the provisions of Title 17, chapter 5, part 1, apply to [section 21].

(2) [Section 22] is intended to be codified as an integral part of Title 7, chapter 12, part 41, and the provisions of Title 7, chapter 12, part 41, apply to [section 22].

Section 24. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 452

[SB 293]

AN ACT REVISING LAWS RELATED TO ALTERNATIVE FUELS AND PETROLEUM PRODUCTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT STANDARDS AND SPECIFICATIONS ENSURING THAT CERTAIN TYPES OF GASOLINE SOLD TO CONSUMERS FOR USE IN MOTOR VEHICLES TO BE OPERATED ON PUBLIC ROADS IS BLENDED WITH ETHANOL AND PROVIDING THAT THE GASOLINE MAY NOT CONTAIN MORE THAN TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS TO 20 CENTS PER GALLON; REVISING THE TIME IN

WHICH TAX CREDITS MAY BE PAID; REDUCING THE AMOUNT OF PAYMENTS THAT MAY BE MADE TO AN ALCOHOL DISTRIBUTOR IN A CALENDAR YEAR FROM \$3 MILLION TO \$2 MILLION; PROVIDING FOR CONTRACTS FOR ETHANOL PRODUCERS ELIGIBLE FOR TAX INCENTIVES; REQUIRING AN ETHANOL PRODUCER TO USE AT LEAST A CERTAIN PERCENTAGE OF MONTANA PRODUCT IN ITS TOTAL PRODUCTION TO QUALIFY FOR THE TAX INCENTIVE; PROVIDING THAT AN ETHANOL FACILITY IS NOT ELIGIBLE FOR THE TAX INCENTIVE UNLESS THE FACILITY PAID A PREVAILING RATE OF WAGES DURING CONSTRUCTION; REVISING REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY; REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE USED FOR FUEL; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN CONDITIONS; CREATING CERTAIN EXCEPTIONS TO THE REQUIREMENT TO USE ETHANOL-BLENDED GASOLINE; REVISING THE CONTINGENCIES ELIMINATING THE PROVISIONS TAXING GASOLINE AT 85 PERCENT OF THE GASOLINE LICENSE TAX AND SPECIAL FUEL TAX RATES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-503, 15-70-522, 17-6-317, 82-15-101, 82-15-102, 82-15-103, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATES.

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

Section 1. Required use of gasoline blended with ethanol. (1) Except as provided in [section 2] and subsection (5) of this section, within 12 months after the department of transportation has certified that the state of Montana has produced 40 million gallons of denatured ethanol and has maintained that level of production on an annualized basis for at least 3 months, the department shall adopt standards and specifications pursuant to 82-15-103 that ensure that all gasoline sold to consumers for use in motor vehicles to be operated on the public highways, roads, and streets of this state must be blended with 10%, by volume, of agriculturally derived, denatured ethanol and may not contain more than trace amounts of the additive methyl tertiary butyl ether.

(2) Except as provided in [section 2] and subsection (5) of this section, 12 months after the department of transportation has certified that the state of Montana has produced 40 million gallons of denatured ethanol and has maintained that level of production on an annualized basis for at least 3 months, a fuel retailer who sells gasoline to consumers to be used in their vehicles on the public highways, roads, and streets of this state may not accept gasoline for sale to consumers or sell gasoline to consumers that is not ethanol-blended as provided in subsection (1) or that contains the additive methyl tertiary butyl ether.

(3) Agriculturally denatured ethanol referred to in subsection (1) may be denatured only as specified in Title 27, parts 20 and 21, of the Code of Federal Regulations.

(4) The department of transportation shall compile a quarterly report certifying the amount of denatured ethanol that is produced in Montana.

(5) Once the production of 40 million gallons of denatured ethanol has been certified and the provisions of subsections (1) and (2) apply, if the production of denatured ethanol drops below 20 million gallons on an annualized basis, the provisions of this section do not apply.

Section 2. Exemptions from use of ethanol-blended gasoline. (1) Gasoline that is not ethanol-blended as required in [section 1] may be sold or dispensed at a public or private racecourse if the gasoline is intended to be used exclusively as a fuel for off-highway motor sports racing events.

(2) Gasoline retailers and wholesale bulk distributors shall hold, store, import, transfer, and offer for sale or use nonethanol-blended unleaded premium grade gasoline with an antiknock index number of 91 or greater.

(3) Aviation fuel is not subject to an ethanol blending requirement.

Section 3. Section 15-70-201, MCA, is amended to read:

~~“15-70-201. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:~~

~~(1) “Agricultural use” means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) “Aviation dealer” means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.~~

~~(3) “Aviation fuel” means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.~~

~~(4) “Bulk delivery” means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.~~

~~(5) (a) “Distributed” means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:~~

~~(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

~~(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

~~(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

~~(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor’s license.~~

~~(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(6) “Distributor” means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;~~

~~(b) a person who imports gasoline for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;~~

~~(d) an exporter as defined in subsection (8);~~

~~(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

~~(f) a person in Montana who blends alcohol with gasoline.~~

~~(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~

~~(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.~~

~~(9) (a) "Gasoline" includes:~~

~~(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and~~

~~(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.~~

~~(b) Gasoline does not include special fuels as defined in 15-70-301.~~

~~(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.~~

~~(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

~~(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or~~

~~(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.~~

~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.~~

15-70-201. (Effective on occurrence of contingency) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means ~~a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10" a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(11) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. ~~(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)~~

~~15 70 201. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions.~~ As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.~~

~~(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.~~

~~(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.~~

~~(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:~~

~~(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

~~(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

~~(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

~~(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(6) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;~~

~~(b) a person who imports gasoline for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;~~

~~(d) an exporter as defined in subsection (8);~~

~~(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

~~(f) a person in Montana who blends alcohol with gasoline.~~

~~(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~

~~(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.~~

~~(9) (a) "Gasoline" includes:~~

~~(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and~~

~~(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.~~

~~(b) Gasoline does not include special fuels as defined in 15-70-301.~~

~~(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.~~

~~(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

~~(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or~~

~~(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.~~

~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."~~

Section 4. Section 15-70-204, MCA, is amended to read:

~~**"15-70-204. (Temporary) Gasoline license tax — rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:~~

~~(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and~~

~~(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.~~

~~(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.~~

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).~~

~~15-70-204. (Effective on occurrence of contingency) Gasoline license tax — rate.~~ (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning the date that the requirement for use of gasohol contained in [section 1] occurs, gasohol is subject to the tax imposed in subsection (1)(b). (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)

~~15-70-204. (Effective July 1 of fourth year following date of occurrence of contingency) Gasoline license tax — rate.~~ (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."~~

Section 5. Section 15-70-503, MCA, is amended to read:

"15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.

(2) "Department" means the department of transportation.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.

(4)(5) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state."

Section 6. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of alcohol — ~~written plan required — reservation of incentives — rules.~~ (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

- (i) is to be blended with gasoline for sale as gasohol in Montana;
- (ii) was exported from Montana to be blended with gasoline for sale as gasohol; or
- (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is ~~30~~ 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol. ~~Beginning July 1, 2010, there is no tax incentive.~~ *The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.*

(3) Regardless of the alcohol tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase; and

(c) an alcohol distributor is not eligible to receive the tax incentive unless at least:

(i) 20% Montana product is used to produce alcohol at the facility in the first year of production;

(ii) 25% Montana product is used to produce alcohol at the facility in the second year of production;

(iii) 35% Montana product is used to produce alcohol at the facility in the third year of production;

(iv) 45% Montana product is used to produce alcohol at the facility in the fourth year of production;

(v) 55% Montana product is used to produce alcohol at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce alcohol at the facility in the sixth year of production.

(4) (a) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an alcohol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of alcohol;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

~~(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written business plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives and has complied with the schedule provided for in subsection (6). The plan must contain the following information:~~

~~(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol for use in gasohol;~~

~~(b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol; and~~

~~(c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.~~

~~(6) An applicant that has provided the department with a written business plan shall meet the following schedule to be able to receive alcohol tax incentive payments:~~

~~(a) start building construction or remodeling within 24 months of the date on which the department received the business plan;~~

~~(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the business plan was received; and~~

~~(c) complete 100% of construction or remodeling of a production facility and be in production of alcohol for use in gasohol for distribution within 48 months of the date on which the business plan was received.~~

~~(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for receiving incentive payments.~~

~~(8)(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall~~

respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the alcohol tax incentives based on actual production according to the terms of ~~subsection~~ subsections (2) and (4).

~~(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production.~~

~~(10) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9).~~

~~(11)~~(7) The department shall prescribe rules necessary to carry out the provisions of this section within 1 year of [the effective date of this act]. The department shall coordinate and request information and input from the alcohol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 7. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions — rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the

additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the average weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the average weekly salary, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) *Except as provided in subsection (5)(b), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.*

(b) *A business enterprise for the production of alcohol to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.*

(6) The board may adopt rules that it considers necessary to implement this section.”

Section 8. Section 82-15-101, MCA, is amended to read:

“82-15-101. Definitions. As used in this part, the following definitions apply:

(1) *“Antiknock index number” means the octane rating of the antiknock characteristics of a grade or type of motor fuel determined as provided in 16 CFR 306.0.*

(~~1~~)⁽²⁾ *“Dealer” means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.*

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

(~~3~~)⁽⁴⁾ *“Liquefied petroleum dealer” means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.*

(~~4~~)⁽⁵⁾ *“Liquefied petroleum product” means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.*

(~~5~~)⁽⁶⁾ *“Liquefied petroleum product container” means a container approved by the American society of mechanical engineers that can hold 110 gallons or more of a liquefied petroleum product.*

(~~6~~)⁽⁷⁾ *“Mislabelled” means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding ingredients or substances in the product or regarding the properties, quality, or kind of products that is false or misleading in any manner.*

(~~7~~)⁽⁸⁾ *“Owner” means a person:*

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

~~(8)~~(9) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

~~(9)~~(10) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection ~~(3)~~(4).

~~(10)~~(11) "Sell" and "sale" includes barter and exchange."

Section 9. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part — rules. (1) ~~This~~ *Except as provided in subsection (2), this part shall must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.*

(2) *Section 82-15-110(8) must be enforced by the department of environmental quality.*

(3) *The board of environmental review shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:*

(a) *a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed. The board shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).*

(b) *reasonable sampling and reporting requirements; and*

(c) *requirements that the board determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."*

Section 10. Section 82-15-103, MCA, is amended to read:

"82-15-103. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, ethanol-blended gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, ~~shall must~~ be determined by the department and, *subject to the provisions of [section 1(1)], shall must* be based upon nationally recognized standards and specifications such as *those that* are published from time to time by the American society for testing materials. ~~When so determined by the~~ *The standards and specifications adopted by rule by the department and adopted as rules, such standards and specifications are the standards and specifications for such those products sold in this state and official tests of such those products shall must be based upon them the adopted standards and specifications."*

Section 11. Section 82-15-104, MCA, is amended to read:

“82-15-104. Department ~~Departments~~ authorized to employ laboratory for testing. The department ~~and, when testing for methyl tertiary butyl ether, the department of environmental quality~~ may employ a laboratory ~~having that has~~ sufficient facilities to make tests of petroleum products as required and ~~may~~ pay reasonable compensation for the analyses and tests made by ~~it~~ the laboratory.”

Section 12. Section 82-15-106, MCA, is amended to read:

“82-15-106. Refusing, suspending, and revoking licenses — hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after a hearing ~~noticed for which~~ notice was provided for not less than 10 days. Violation of any provision of this part, ~~except 82-15-110(8), or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on those terms which that~~ the department considers ~~just and proper~~ appropriate.”

Section 13. Section 82-15-110, MCA, is amended to read:

“82-15-110. Unlawful acts. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the ~~same~~ the meter or mechanical device has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department’s seal without written consent from the department;

(3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the department under 82-15-108;

(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device ~~which that~~ has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the ~~commodities~~ fuel product meets in all respects ~~meet~~ the tests and standards prescribed;

(7) sell, offer, or expose for sale any petroleum product ~~which that~~ is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended; or

(8) import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted pursuant to 82-15-102(3)(a).”

Section 14. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether — notice requirements — hearing — penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant

to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation has occurred, it shall either affirm or modify the order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review finds no violation has occurred, it shall rescind the order of the department of environmental quality.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred.

Section 15. Section 82-15-111, MCA, is amended to read:

“82-15-111. Penalty for violations. A person who *purposely, knowingly, or negligently* violates any of the provisions of this part, *except 82-15-110(8)*, or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.”

Section 16. Section 12, Chapter 568, Laws of 2001, is amended to read:

“Section 12. Contingent effective date. ~~[This act] is~~ *[Sections 5 through 10] are* effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20 million on June 30 following the date on which the condition in subsection (1) is complied with.”

Section 17. Section 13, Chapter 568, Laws of 2001, is amended to read:

“**Section 13. Contingent termination.** ~~{This act} terminates~~ [Sections 5 through 10] terminate June 30 of the fourth year following [the effective date of this act].”

Section 18. Repealer. Section 15-70-245, MCA, is repealed.

Section 19. Codification instruction. [Sections 1, 2, and 14] are intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [sections 1, 2, and 14].

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Contingent termination. (1) Subject to subsection (2), [sections 1 and 2] and the amendments to 15-70-204 terminate 5 years after the production level provided for in [section 1] is met.

(2) If, after the 40-million-gallon production requirement of [section 1] is met, the production of denatured ethanol in Montana falls below 20 million gallons on an annualized basis, [sections 1 and 2] and the amendments to 15-70-204 are terminated.

(3) The department of transportation shall inform the code commissioner of the date that the production level provided for in [section 1] is met.

(4) The department of transportation shall inform the code commissioner if production of denatured ethanol in Montana falls below 20 million gallons on an annualized basis once the production requirement of 40 million gallons provided for in [section 1] has been met.

Approved April 28, 2005

CHAPTER NO. 453

[SB 301]

AN ACT REVISING THE LAWS GOVERNING LOCAL GOVERNMENT MILL LEVIES; ALLOWING LOCAL GOVERNMENTS TO IMPOSE MILL LEVIES FOR PUBLIC OR GOVERNMENTAL PURPOSES RATHER THAN FOR STATUTORILY ENUMERATED PURPOSES; REMOVING RESTRICTIONS ON THE COUNTY ALL-PURPOSE LEVY; REMOVING CERTAIN REFERENCES TO MAXIMUM MILL LEVIES; CHANGING THE CONTENTS OF THE PROPERTY TAX NOTICE; AMENDING SECTIONS 7-1-2103, 7-1-4123, 7-6-2501, 7-6-2521, 7-6-2522, 7-6-2524, 7-6-4401, 7-6-4421, 7-7-4104, 7-13-144, 7-13-3027, 7-21-3410, 15-16-101, 15-16-117, 22-1-304, 50-2-111, 53-21-1010, 67-10-402, AND 81-8-504, MCA; REPEALING SECTIONS 7-6-2523, 7-6-2526, 7-6-4023, 7-14-2504, AND 50-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-1-2103, MCA, is amended to read:

“**7-1-2103. County powers.** A county has power to:

- (1) sue and be sued;
- (2) purchase and hold lands within its limits;
- (3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;
- (4) make orders for the disposition or use of its property that the interests of its inhabitants require;
- (5) subject to 15-10-420, levy and collect taxes for ~~the public or governmental~~ purposes, as described in [section 7], under its exclusive jurisdiction ~~that are authorized unless prohibited by law.~~

Section 2. Section 7-1-4123, MCA, is amended to read:

“7-1-4123. Legislative powers. A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

- (1) preserve peace and order and secure freedom from dangerous or noxious activities;
- (2) secure and promote the general public health and welfare;
- (3) provide any service or perform any function authorized or required by state law;
- (4) exercise any power granted by state law;
- (5) subject to 15-10-420, levy any tax authorized by state law for public or governmental purposes as described in [section 7];
- (6) appropriate public funds;
- (7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;
- (8) grant franchises; and
- (9) provide for its own organization and the management of its affairs.”

Section 3. Section 7-6-2501, MCA, is amended to read:

“7-6-2501. Authorization for county mill levy. Subject to 15-10-420, the board of county commissioners may levy a tax annually on the taxable property of the county for county public or governmental purposes that is necessary to defray current expenses and may levy taxes that are required to be levied by special or local statutes.”

Section 4. Section 7-6-2521, MCA, is amended to read:

“7-6-2521. All-purpose levy authorized for counties. A county may at its option levy an all-purpose levy as provided in ~~7-6-2521 through 7-6-2522 and 7-6-2524 and 7-6-2526.~~”

Section 5. Section 7-6-2522, MCA, is amended to read:

“7-6-2522. All-purpose levy. ~~(1)~~ Subject to 15-10-420, the all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county public or governmental purposes ~~in lieu of the levies specified in 7-6-2523.~~

~~(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to impose the all-purpose levy in the resolution approving and adopting the annual budget.”~~

Section 6. Section 7-6-2524, MCA, is amended to read:

“7-6-2524. Changes from all-purpose levy. A county adopting the all-purpose levy provided for in 7-6-2521 ~~through and 7-6-2522 7-6-2524 and 7-6-2526~~ is bound by that adoption during the ensuing fiscal year but may abandon the method in succeeding fiscal years.”

Section 7. County taxation — purposes. A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:

- (1) district court purposes as provided in 7-6-2511;
- (2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;
- (3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;
- (4) multijurisdictional service purposes as provided in 7-11-1106;
- (5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;
- (6) support for a port authority as provided in 7-14-1132;
- (7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;
- (8) recreational, educational, and other activities of the elderly as provided in 7-16-101;
- (9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, 7-16-2109, and 7-21-3410;
- (10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;
- (11) support for a museum, facility for the arts and the humanities, or collection of exhibits as provided in 7-16-2205;
- (12) extension work in agriculture and home economics as provided in 7-21-3203;
- (13) weed control and management purposes as provided in 7-22-2142;
- (14) insect control programs as provided in 7-22-2306;
- (15) fire control as provided in 7-33-2209;
- (16) ambulance service as provided in 7-34-102;
- (17) public health purposes as provided in 50-2-111 and 50-2-114;
- (18) public assistance purposes as provided in 53-3-115;
- (19) indigent assistance purposes as provided in 53-3-116;
- (20) developmental disabilities facilities as provided in 53-20-208;
- (21) mental health services as provided in 53-21-1010;
- (22) airport and landing field purposes as provided in 67-10-402 and 67-11-302;
- (23) purebred livestock shows and sales as provided in 81-8-504; and

(24) economic development purposes as provided in 90-5-112.

Section 8. Section 7-6-4401, MCA, is amended to read:

“7-6-4401. General taxing power of municipalities. Subject to 15-10-420, the city or town council may levy and collect taxes for general and special *public or governmental* purposes on all property within the city or town subject to taxation under the laws of the state.”

Section 9. Section 7-6-4421, MCA, is amended to read:

“7-6-4421. Authorization for tax levy and collection by municipality.

(1) Subject to 15-10-420, the council has power to annually levy and collect taxes on all the property in the city or town taxable for state and county *public or governmental* purposes and may by ordinance provide for the levy and collection of the taxes.

(2) Until the passage of the ordinance, the levy and collection of municipal taxes are and the proceedings for those purposes must be as provided in this part.”

Section 10. Section 7-7-4104, MCA, is amended to read:

“7-7-4104. Incurrence of certain general obligations. (1) A municipality may enter into or incur an obligation for any *public or governmental* purpose ~~authorized by law~~, including the purposes set forth in 7-7-4101. An obligation may be in the form of bonded indebtedness, note indebtedness, a lease, a lease-purchase agreement, an installment purchase contract, or other legal form. An obligation constitutes a general obligation of the municipality but is not secured by a pledge of the taxing power of the municipality.

(2) The obligation provided for in subsection (1) may be authorized by a resolution adopted by the governing body of the municipality. The resolution must establish the terms, covenants, and conditions of the obligation. It is not necessary to submit the question of incurring the obligation to the electors of the municipality. The obligation may be incurred or sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The obligation does not constitute indebtedness for the purpose of statutory debt limitations.

(3) An obligation may be issued only if:

(a) the principal amount of the obligation does not exceed 10% of the general fund budget of the municipality in each of the 2 immediately preceding fiscal years;

(b) at the time the obligation is to be incurred, the debt services in the current or in any future fiscal year on the obligation and any other outstanding obligation issued pursuant to this section do not exceed 2% of the revenue deposited in the general fund of the municipality in each of the 2 immediately preceding fiscal years; and

(c) the term of the obligation does not exceed 20 years.

(4) The obligation must clearly state that it is not secured by a pledge of the municipality's taxing power but that it is payable solely from revenue in the general fund in any fiscal year that is pledged to the payment of the obligation.

(5) In order to secure the payment of principal of or interest on an obligation and related charges, the municipality may grant a first lien on all revenue collected and deposited in the general fund subject to or on a parity with any

prior pledges. The municipality may establish other funds and accounts for obligations issued under this section that may be necessary to provide for the priority and segregation of revenue deposited in the general fund and pledged to the payment of obligations. For purposes of this section, related charges include the fees and expenses of registrars and paying agents and the amounts, if any, that must be rebated to the federal government under 26 U.S.C. 148.

(6) All obligations incurred under this section are legal and valid obligations of the municipality issuing the obligations, and the general credit of the municipality is irrevocably pledged for the prompt payment of both the principal of and interest on the obligations as they become due. However, the municipality may not be obligated to levy taxes for the payment of any obligation or interest on the obligation.

(7) The powers conferred on a municipality by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local law. To the extent that the provisions of this section are inconsistent with provisions of any other general, special, or local law, the provisions of this section are controlling.”

Section 11. Section 7-13-144, MCA, is amended to read:

“7-13-144. Resolution to establish service charges — hearing — limitations and tax levy. The board of county commissioners ~~shall have authority~~ *may*, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) ~~to~~ fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year; to provide income and ~~revenues~~ *revenue* adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) ~~to~~ fix and establish an additional charge; for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) ~~to~~ *subject to 15-10-420*, levy and ~~to~~ assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements ~~thereon~~ *on the parcel or lot* in the district, ~~not in excess of 2 mills on each dollar of taxable valuation, in order to provide sufficient revenues~~ *revenue* for the reserve fund of ~~the amounts in an amount~~ necessary to meet the financial requirements of ~~such the fund as described in 7-13-151 through 7-13-156.~~”

Section 12. Section 7-13-3027, MCA, is amended to read:

“7-13-3027. Resolution to establish service charges — hearing — limitations and tax levy. The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and ~~revenues~~ *revenue* adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) *subject to 15-10-420*, levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district, ~~not in excess of 2 mills on each dollar of taxable valuation; to provide sufficient revenues~~ *revenue* for the reserve fund in ~~the amounts~~ *an amount* necessary to meet the financial requirements of the fund as described in 7-13-3034 through 7-13-3039.”

Section 13. Section 7-21-3410, MCA, is amended to read:

“7-21-3410. Funding of county fair activities. (1) The board of county commissioners may appropriate annually, out of the general fund of the county treasury and to the county fair commission, ~~a sum not to exceed \$3,500;~~ funds to be expended by the county fair commission for the purpose of holding a county fair or junior fair and for advertising the products and resources of the county.

(2) Subject to 15-10-420 and in addition to or in lieu of the appropriation provided for in subsection (1), the county commissioners may levy an ad valorem tax ~~of 1 1/2 mills or less~~ on each dollar of taxable property in the county for the purpose of securing, equipping, maintaining, and operating a county fair or a junior fair, including the purchase of land and the erection of buildings and other appurtenances as may be necessary.

(3) The funds derived from the appropriation or tax levy must be kept in a separate fund by the county treasurer and must be paid out by the treasurer on order signed by the president and secretary of the fair commission.”

Section 14. Section 15-16-101, MCA, is amended to read:

“15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(i) the taxable value of the property;

(ii) the total mill levy applied to that taxable value;

~~(iii) the value of each mill in that county;~~

~~(iv)~~(iii) itemized city services and special improvement district assessments collected by the county;

~~(v)~~(iv) the number of the school district in which the property is located; and

~~(vi)~~(v) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(b) If the property is the subject of a tax sale for which a tax sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection ~~(2)(a)(iv)~~ (2)(a)(iii) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.”

Section 15. Section 15-16-117, MCA, is amended to read:

“15-16-117. Personal property — treasurer’s duty to collect certain taxes. (1) The county treasurer shall demand payment of road taxes, authorized by 7-14-2206 or 7-14-2501 through ~~7-14-2504~~ 7-14-2503, from each person liable for the taxes whose name does not appear on the property tax record. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) Subject to 15-10-420, these taxes must be added in the property tax record to other property taxes of persons paying taxes upon real and personal property and must be paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes is regulated by 15-16-119 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.”

Section 16. Section 22-1-304, MCA, is amended to read:

“22-1-304. Tax levy — special library fund — bonds. (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.

(2) (a) The governing body of a city or county may by resolution submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425. The resolution must be adopted at least 75 days prior to the election at which the question will be voted on.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of imposing a mill levy, the governing body shall submit to a vote of the qualified electors at the next election or at a special election, as provided in 15-10-425, the question of imposing the mill levy. The petition must be delivered to the governing body at least 90 days prior to the election at which the question will be voted on.

~~(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 and 7-6-4453.~~

~~(4)~~(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

~~(5)~~(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

~~(6)~~(5) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library.”

Section 17. Section 50-2-111, MCA, is amended to read:

“50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county’s part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40.

(c) Each participating city’s part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(2) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) Subject to 15-10-420, the county’s part of the total expenses is financed by a levy on the taxable value of all taxable property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40. If the levy is not sufficient to fund the county’s share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Subject to 15-10-420, each participating city’s part of the total expenses is financed by a levy on the taxable value of all taxable property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

~~(e) The levies authorized by this subsection (2) are in addition to all other levies authorized by law.”~~

Section 18. Section 53-21-1010, MCA, is amended to read:

“53-21-1010. (Effective July 1, 2005) County commissioners — community mental health centers — licensed mental health centers. (1) The county commissioners in each of the counties in the region or service area that are designated as participating counties pursuant to subsection (4) may

appoint, upon request, a person from their respective county to serve as a representative of the county on a community mental health center board or other licensed mental health center board.

(2) A community mental health center board or other licensed mental health center board may establish a recommended proportionate level of financial participation for each of the counties within the region for the provision of mental health services within the limits of financial participation authorized by this section.

(3) Prior to June 10 of each year, the board of a community mental health center or other licensed mental health center may submit an annual budget to the board of county commissioners of each of the counties within their mental health region or service area, specifying each county's recommended proportionate share.

(4) If a board of county commissioners includes in the county budget the county's proportionate share of the community mental health center or other licensed mental health center board's budget, the county must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. Subject to 15-10-420, if the general fund is insufficient to meet the approved budget, a levy may be made on the taxable valuation of the county ~~in addition to all other taxes allowed by law to be levied on that property.~~

(5) Each board of county commissioners, after determining the amount of county general fund money to be used for mental health services, may contract with a community mental health center or another licensed mental health center or provider for mental health services in the county."

Section 19. Section 67-10-402, MCA, is amended to read:

"67-10-402. Tax levy. (1) Subject to 15-10-420 and for the purpose of establishing, constructing, equipping, maintaining, and operating airports, landing fields, and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, ~~in addition to the annual levy for general administrative purposes or the all-purpose mill levy authorized by 7-6-4451,~~ a tax on the taxable value of all taxable property in the county, city, or town for airports and landing fields and for ports.

(2) In the event of a jointly established airport, landing field, or port, the county commissioners and the city or town council or councils involved shall determine in advance the levy necessary for those purposes and the proportion that each political subdivision joining in the venture is required to pay.

(3) If the levy is insufficient for the purposes enumerated in subsection (1), the commissioners and councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition has been submitted to the qualified electors and approved by a majority vote, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve runways by overlays or similar methods periodically is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from the investments must be credited to the operations and maintenance budget of the airport or port governing body. Due to the uniqueness of the subject matter, the provisions of this section are declared necessary in the interests of the public health and safety.”

Section 20. Section 81-8-504, MCA, is amended to read:

“**81-8-504. Tax levy authorized.** For the purpose of defraying the costs of purebred livestock shows and purebred livestock sales, the county commissioners may, subject to 15-10-420, levy a tax on the taxable value of all taxable property in the county, ~~in excess of the amount levied for county purposes.~~ The taxes must be paid into the general fund of the county.”

Section 21. Repealer. Sections 7-6-2523, 7-6-2526, 7-6-4023, 7-14-2504, and 50-2-114, MCA, are repealed.

Section 22. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 7, chapter 6, part 25, and the provisions of Title 7, chapter 6, part 25, apply to [section 7].

Section 23. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 454

[SB 323]

AN ACT ALLOWING A 5-YEAR CARRYFORWARD OF THE INCOME AND CORPORATE TAX CREDIT FOR THE PUBLIC CONTRACTOR'S GROSS RECEIPTS TAX; AMENDING SECTION 15-50-207, 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 15-50-207, MCA, is amended to read:

“**15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.** (1) (a) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(b) *The credit allowed under this subsection (1) may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 5 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.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-562, paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or corporation license tax credit."

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, 2004.

Approved April 28, 2005

CHAPTER NO. 455

[SB 340]

AN ACT ALLOWING THE CREDIT FOR GEOTHERMAL SYSTEMS INSTALLED IN RESIDENCES TO BE CLAIMED BY A PERSON CONSTRUCTING A RESIDENCE; ALLOWING THE CREDIT TO BE USED FOR CORPORATE LICENSE OR INCOME TAXES; AMENDING SECTION 15-32-115, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-32-115, MCA, is amended to read:

"15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations. (1) A resident individual taxpayer *or a person constructing a new residence* who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling *or in a residence constructed by the taxpayer* is entitled to claim a tax credit against the taxpayer's tax liability under chapter 30 *or 31* for a portion of the installation costs of the system, not to exceed \$1,500. *Only one credit may be claimed for a residence.* The amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under chapter 30 *or 31* for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year. *A credit is not allowed under this section for expenditures claimed as a deduction under 15-32-103.*

(2) For the purposes of this section, installation costs include the cost of:

- (a) trenching, well drilling, casing, and downhole heat exchangers;
- (b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;
- (c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor.”

Section 2. Effective date. [This act] is effective January 1, 2006.

Section 3. Applicability. [This act] applies to tax years beginning after December 31, 2005.

Approved April 28, 2005

CHAPTER NO. 456

[SB 380]

AN ACT PROVIDING FOR REGULATION OF MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS APPLICABLE TO CARDS AND PERSONS WHO SUPPLY CARDS; SPECIFYING UNLAWFUL ACTS; PROVIDING A RIGHT TO RETURN AND REQUIRING NOTICE OF THE RIGHT TO RETURN MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; REQUIRING REGISTRATION OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; REQUIRING FINANCIAL RESPONSIBILITY OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; PROVIDING CERTAIN EXCEPTIONS, INCLUDING A WAIVER FOR PREFERRED PROVIDER ORGANIZATIONS; REQUIRING A CARD EDUCATION PROGRAM; PROHIBITING FRAUD CONCERNING CARDS; AMENDING SECTIONS 33-1-318, 33-1-1301, AND 33-1-1302, MCA; REPEALING SECTION 33-1-107, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 33-1-318, MCA, is amended to read:

“33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-107, 33-1-501, 33-1-1302, 33-14-201, chapters 2, 16 through 18, and 30 of this title, [sections 4 through 11], part 13 of chapter 20 of this title, or part 4 of chapter 25 of this title, or any rule or order issued under this code, 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;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner’s receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this code or any rule or order issued under this code. 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.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the hearings examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must be issued within 30 days of the submission of the comments.

(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 for each violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. 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 a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a 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 that 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 this code."

Section 2. Section 33-1-1301, MCA, is amended to read:

"33-1-1301. Insurance, medical care discount card, pharmacy discount card, and securities fraud education and prevention program. (1) The commissioner may:

(1)(a) establish an insurance, *medical care discount card, pharmacy discount card*, and securities fraud education and prevention program; and

(1)(b) conduct investigations of insurance, *medical care discount card, pharmacy discount card*, and securities fraud.

(2) *As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in [section 5]."*

Section 3. Section 33-1-1302, MCA, is amended to read:

"33-1-1302. Insurance, medical care discount card, and pharmacy discount card fraud — insurer. (1) A person commits the act of insurance, *medical care discount card, or pharmacy discount card* fraud when, in the course of offering or selling insurance, *a medical care discount card, or a pharmacy discount card*, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment.

(2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, *medical care discount card, or pharmacy discount card* fraud to make full restitution to

the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, or refund, or other benefit received by the victim from the insurance, medical care discount card, or pharmacy discount card.

(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

(7) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds or a medical care discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

(8) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in [section 5]."

Section 4. Short title — purpose. (1) [Sections 4 through 11] may be cited as the "Montana Medical Care Discount Card and Pharmacy Discount Card Act".

(2) The purposes of [sections 4 through 11] are to regulate the promotion, offer, sale, and use of medical care discount cards and pharmacy discount cards and to facilitate the detection of and reduce the occurrence of medical care discount card and pharmacy discount card fraud.

Section 5. Definitions. As used in [sections 4 through 11], unless the context indicates otherwise, the following definitions apply:

(1) "Administrator" has the meaning provided for in 33-17-102(3).

(2) "Enroller" means a person who:

(a) solicits the purchase or renewal of a medical care discount card through that person;

(b) transmits, for consideration, from a supplier to another person or from another person to a supplier a contract or application for a medical care discount card or the renewal of a medical care discount card; or

(c) acts or aids in another manner in the delivery or negotiation of a medical care discount card or the renewal or continuance of a medical care discount card.

(3) "Health care provider" means:

(a) an individual licensed by the department of labor and industry to practice or who holds a temporary permit to practice a branch of the healing arts;

(b) a professional corporation organized pursuant to Title 35, chapter 4, by one or more individuals described in subsection (3)(a);

(c) a Montana limited liability company organized pursuant to Title 35, chapter 8, for the purpose of rendering professional services by individuals described in subsection (3)(a);

(d) a partnership of individuals described in subsection (3)(a);

(e) a Montana nonprofit corporation organized pursuant to Title 35, chapter 2, for the purpose of rendering professional health care services by one or more individuals described in subsection (3)(a); or

(f) a health care facility as defined in 50-5-101.

(4) "Health insurance issuer" means a health insurance issuer, as defined in 33-22-140, that is authorized to do business in this state and its affiliates, as defined in 33-2-1101.

(5) (a) "Medical care discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider.

(b) The term does not include a pharmacy discount card unless a pharmacy discount benefit is combined with another type of medical care discount.

(6) "Medical care discount card supplier" means a person engaged in selling or furnishing, either as principal or agent, for consideration, one or more medical care discount cards to another person or persons.

(7) "Network of health care providers" means two or more health care providers who are contractually obligated to provide services in accordance with the terms and conditions applicable to a medical care discount card.

(8) "Pharmacy discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for a consideration, a discount or access to a discount on one or more prescription drugs, and that is not combined with another type of medical care discount.

(9) "Pharmacy discount card supplier" means a person engaged in selling or furnishing, either as a principal or agent, for a consideration, one or more pharmacy discount cards to another person or persons.

(10) "Preferred provider organization company" means a company that contracts with health care providers for lower fees than those customarily charged by the health care provider for services and contracts with health insurance issuers, administrators, or self-insured employers to provide access to those lower fees to a particular group of insureds, subscribers, participants, beneficiaries, members, or claimants.

(11) "Prescription drug provider" means a pharmacy or other business that is contractually bound to provide a discount on one or more prescription drugs in conjunction with the use of a pharmacy discount card.

(12) "Service area" means the area within a 60-mile radius of the home or place of business of a medical care discount card user or pharmacy discount card user.

Section 6. Unlawful acts by medical care discount card suppliers or enrollers. (1) A medical care discount card supplier or an enroller that markets, promotes, advertises, or distributes a medical care discount card in Montana:

(a) may not make misleading, deceptive, or fraudulent representations regarding:

(i) the discount or range of discounts offered by a medical care discount card;

(ii) the access to any range of discounts offered by a medical care discount card; or

(iii) another medical care service provided in connection with a medical care discount card;

(b) may not use terms or phrases commonly associated with insurance products that could lead a prospective purchaser or user of a medical care discount card to believe that the card being offered is comprised of one or more insurance products or is a substitute for insurance, despite disclaimers to the contrary by the medical care discount card supplier or enroller;

(c) shall provide to a prospective purchaser or user, before purchase, access to a list of health care providers, including the name, city, state, and provider type and, optionally, the address and telephone number of each health care provider in the prospective purchaser's or user's service area; and

(d) shall make continuously available to each medical care discount card user, through a toll-free telephone number, the internet, and in writing upon request, the name, address, telephone number, and provider type of all health care providers in the user's service area who are bound by contract to provide services in accordance with the terms and conditions applicable to the card.

(2) A medical care discount card supplier that markets, promotes, advertises, or distributes a medical care discount card in Montana shall:

(a) state, on all advertisements for medical care discount cards, in bold and prominent type of at least 14 points in size, and on all cards themselves in clear and conspicuous type, that the card is not insurance;

(b) designate and provide the commissioner with the name, address, and telephone number of a medical care discount card compliance officer responsible for ensuring compliance with the provisions of [sections 4 through 11] applicable to medical care discount cards and medical care discount card suppliers and enrollers; and

(c) ensure that if the medical care discount card supplier claims that a specific health care provider offers a discount in conjunction with the medical care discount card, that specific health care provider is contractually bound to provide that discount to the purchaser or user.

Section 7. Right to return or cancel medical care discount card or pharmacy discount card — notice — prohibited acts. (1) A medical care discount card or pharmacy discount card issued for delivery in this state is returnable or cancelable, within 30 days of the date of delivery of the card or a longer period if provided in the purchase agreement, by the purchaser or user for any reason, and the user must receive a full refund of all fees, except nominal fees associated with enrollment costs, that were part of the cost of the card.

(2) A medical care discount card supplier or pharmacy discount card supplier may not charge or collect a fee, including a cancellation fee, after a purchaser or user has returned a card to the supplier or given the supplier notice of the person's intention to return or cancel the card.

(3) A medical care discount card supplier or pharmacy discount card supplier shall ensure that each purchaser or user receives with the card a notice

stating the terms under which the medical care discount card or pharmacy discount card may be returned or cancelled as provided in subsections (1) and (2). A medical care discount card or pharmacy discount card returned or cancelled in accordance with this section is void from the date of purchase.

Section 8. Sale of medical care discount card by unregistered supplier prohibited — requirements for registration — list of authorized enrollers required — exceptions. (1) A medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the commissioner.

(2) An application to the commissioner for a certificate of registration must be accompanied by a nonrefundable application fee of \$100. The commissioner shall issue the certificate unless the commissioner determines that the medical care discount card supplier or an officer or manager is not financially responsible, does not have adequate expertise or experience to operate a medical care discount card business, or is not of good character or that the supplier or its affiliates or a business formerly owned or managed by the supplier or an officer or manager of the supplier has had a previous application for a certificate of registration denied, revoked, suspended, or terminated for cause or is under investigation for or has been found in violation of a statute or regulation in another jurisdiction within the previous 5 years.

(3) A medical care discount card supplier shall renew its certificate of registration annually. The certificate is renewed upon payment by the supplier of a nonrefundable renewal fee of \$100 and expires on the anniversary of its issuance if the renewal fee is not paid before that date. Once issued or renewed, the certificate continues in effect for 1 year unless suspended, revoked, or terminated. The commissioner shall deposit the fees required by this section with the state treasurer, to be credited to the general fund.

(4) A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the medical care discount card supplier has violated a provision of [sections 4 through 11], that the supplier is not financially responsible or competent or that the supplier or an affiliate or business formerly owned or managed by the supplier has had a certificate of registration denied or suspended for cause or has been found in violation of a statute or regulation in another jurisdiction.

(5) A medical care discount card supplier that violates the provisions of subsection (1) is subject to a civil penalty of not less than \$5,000 or more than \$25,000 for each violation. Each day of violation is considered to be a separate violation.

(6) A medical care discount card supplier that is a health insurance issuer is not required to obtain a certificate of registration in accordance with this section, except that affiliates, as defined in 33-2-1101, that are selling medical care discount cards in Montana shall obtain a certificate of registration.

(7) An administrator that is authorized to do business in this state and that provides medical care discount cards to Montana residents who are members of self-funded group health plans administered by that administrator is not required to obtain a certificate of registration pursuant to this section.

(8) A person acting as a medical care discount card supplier on October 1, 2005, shall file a certificate of registration and a list of its authorized enrollers with the commissioner by that date. A person commencing business as a

supplier after October 1, 2005, shall file a certificate of registration and its list of authorized enrollers with the commissioner at least 30 days before commencing business as a supplier. After the initial filing of a list of its enrollers with the commissioner, a supplier shall file an updated list annually.

(9) This section does not excuse a medical care discount card supplier that is also an insurer from full compliance with the Montana Insurance Code.

Section 9. Medical care discount card supplier financial responsibility requirements — claims against bonds or accounts — exemptions. (1) A person intending to act as a medical care discount card supplier may not market, promote, advertise, or distribute a medical care discount card in this state until the person has purchased a bond or established a surety account and filed with the commissioner a copy of a bond or a statement identifying a surety account depository as provided in this section.

(2) A person intending to act as a medical care discount card supplier shall:

(a) purchase and maintain a surety bond in the amount of \$50,000 issued by a surety company authorized to do business in this state; or

(b) establish and maintain a surety account in the amount of \$50,000 at a federally insured bank, savings and loan association, or federal savings bank located in this state.

(3) A person intending to act as a medical care discount card supplier shall provide the depository, trustee, and account number of the surety account to the commissioner and shall annually provide to the commissioner proof of renewal of the bond or maintenance of the surety account. The person shall pay a nonrefundable filing fee of \$250 with the initial filing and with each subsequent filing.

(4) A medical care discount card supplier shall maintain the surety account or bond until 2 years after the date that the supplier ceases operations in the state. Money from a surety account may not be released to the supplier without the written consent of the commissioner.

(5) A surety on a medical care discount card company bond may not cancel a bond required by this section without giving at least 21 days' written notice of cancellation to the medical care discount card supplier and the commissioner. If the commissioner receives notice of a surety's intention to cancel a supplier's bond, the commissioner shall notify the affected supplier that, unless the supplier files another \$50,000 surety bond with the commissioner or establishes a \$50,000 surety account on or before the date the bond is to be cancelled, the supplier may no longer do business as a supplier in this state.

(6) A bond surety shall write a bond required by this section and a person intending to act as a medical care discount card supplier shall establish an account in favor of a person, and the commissioner for the benefit of a person, injured by a violation of [sections 4 through 11]. The bond surety shall also write the bond to cover any fines levied against the supplier, a supplier's enroller, or both, for a violation of [sections 4 through 11] occurring during the time the supplier's bond is in effect.

(7) A person with a claim against a medical care discount card supplier's bond or surety account for a violation of a provision of [sections 4 through 11] may maintain an action against the supplier and against either the bond surety or the trustee of the surety account, as appropriate. The aggregate liability of the surety or trustee to a person injured by a violation of [sections 4 through 11] may not exceed the amount of the surety bond or account.

(8) A person acting as a medical care discount card supplier on October 1, 2005, shall file with the commissioner a copy of a surety bond or statement identifying a surety account depository on that date. A person commencing business as a supplier after October 1, 2005, shall file a copy of a bond or statement with the commissioner at least 30 days before commencing business as a supplier.

(9) A health insurance issuer that is also a medical care discount card supplier is exempt from the requirements of this section.

(10) An administrator that is authorized to do business in this state and that provides medical care discount cards to Montana residents who are members of self-funded group health plans administered by that administrator is exempt from the requirements of this section.

Section 10. Waiver of registration and bonding requirements. The commissioner may waive the requirements of [sections 8 and 9] for any preferred provider organization company. The factors taken into account in granting a waiver include but are not limited to whether the company:

- (1) has contracts in place with health care providers residing in this state;
- (2) has contracts in place with users and purchasers of health care services residing in this state who use the medical care discount card in conjunction with a self-funded or fully insured health plan;
- (3) is primarily in the preferred provider organization business or primarily in the medical care discount card supplier business; and
- (4) was in business in this state prior to [the effective date of the act].

Section 11. Pharmacy discount card supplier requirements. (1) A pharmacy discount card supplier that sells, markets, promotes, or distributes, for a consideration, a pharmacy discount card in Montana:

- (a) shall clearly and conspicuously disclose on all advertising, marketing materials, and enrollment materials that discounts offered through the use of a pharmacy discount card are not insurance and are not intended as a substitute for insurance;
- (b) shall clearly and conspicuously disclose on all pharmacy discount cards that discounts offered through the use of the pharmacy discount card are not insurance;
- (c) shall disclose, when a pharmacy discount card is sold in combination with a group limited supplemental insurance policy, that discounts offered through the use of the pharmacy discount card are not insurance;
- (d) may not, in the advertising or offering of the pharmacy discount card, use terms or phrases commonly associated only with insurance products that could lead a prospective purchaser or user of the card to believe that the pharmacy discount card is comprised of insurance products or is a substitute for insurance, despite disclaimers to the contrary by the pharmacy discount card supplier;
- (e) shall ensure that each prescription drug provider claimed by the pharmacy discount card supplier to offer a discount in conjunction with the pharmacy discount card is contractually bound to provide that discount to the purchaser or user;
- (f) may not make misleading, deceptive, or fraudulent representations regarding a discount or range of discounts available through the use of a pharmacy discount card;

(g) shall provide to each prospective purchaser or user prior to purchase reasonable access to a list of the benefits and services provided through the use of a pharmacy discount card;

(h) shall provide a prospective purchaser or user prior to purchase access to a list of any prescription drug providers in the prospective purchaser's or user's service area;

(i) shall disclose in all enrollment materials that a pharmacy discount card purchaser or user has 30 days to cancel a pharmacy discount card as provided in [section 7];

(j) shall make available to each pharmacy discount card user continuously after purchase of a pharmacy discount card, through a toll-free telephone number, the internet, and in writing upon request, the name, address, and telephone number of each prescription drug provider in the user's service area, including mail order prescription drug providers, that are bound by contract to offer prescription drugs in accordance with the terms and conditions of the pharmacy discount card; and

(k) shall designate and provide the commissioner with the name, address, and telephone number of a pharmacy discount card compliance officer responsible for ensuring compliance with the provisions of [sections 4 through 11] applicable to pharmacy discount cards and pharmacy discount card suppliers.

(2) A person violating the provisions of subsection (1) is subject to the fine provided for in 33-1-317.

Section 12. Repealer. Section 33-1-107, MCA, is repealed.

Section 13. Codification instruction. [Sections 4 through 11] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 4 through 11].

Section 14. Applicability. [Sections 4 through 11] apply to a person acting or intending to act as a medical care discount card supplier or enroller, a person acting or intending to act as a pharmacy discount card supplier, a medical care discount card issued, or a pharmacy discount card issued on and after October 1, 2005.

Approved April 28, 2005

CHAPTER NO. 457

[SB 415]

AN ACT CREATING THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; PROVIDING LEGISLATIVE FINDINGS; DEFINING TERMS; PROVIDING A GRADUATED RENEWABLE ENERGY STANDARD; AUTHORIZING ADMINISTRATIVE PENALTIES; PROVIDING A WAIVER PROCESS FOR PUBLIC UTILITIES; ESTABLISHING A PROCUREMENT PROCESS; AUTHORIZING ADVANCE APPROVAL OF CERTAIN PROCUREMENT CONTRACTS BY THE PUBLIC SERVICE COMMISSION; REQUIRING THE SUBMISSION OF PROCUREMENT PLANS; AUTHORIZING THE COMMISSION TO IMPLEMENT AND ENFORCE THE PROVISIONS OF THIS ACT; PROVIDING THE COMMISSION WITH RULEMAKING

AUTHORITY; EXEMPTING COOPERATIVE UTILITIES FROM THE GRADUATED RENEWABLE ENERGY STANDARD; REQUIRING CERTAIN COOPERATIVE UTILITIES TO IMPLEMENT AND ENFORCE THEIR OWN RENEWABLE ENERGY STANDARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE .

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

Section 1. Short title. [Sections 1 through 8] may be cited as the “Montana Renewable Power Production and Rural Economic Development Act”.

Section 2. Findings. The legislature finds that:

- (1) Montana is blessed with an abundance of diverse renewable energy resources;
- (2) renewable energy production promotes sustainable rural economic development by creating new jobs and stimulating business and economic activity in local communities across Montana;
- (3) increased use of renewable energy will enhance Montana’s energy self-sufficiency and independence; and
- (4) fuel diversity, economic, and environmental benefits from renewable energy production accrue to the public at large, and therefore all consumers and utilities should support expanded development of these resources to meet the state’s electricity demand and stabilize electricity prices.

Section 3. Definitions. As used in [sections 1 through 8], 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, and reactive power.
- (2) “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 among the 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.
- (3) “Community renewable energy project” means an eligible renewable resource that 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 5 megawatts in total calculated nameplate capacity.
- (4) “Compliance year” means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with [sections 1 through 8] must be demonstrated.
- (5) “Cooperative utility” means:
 - (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
 - (b) an existing municipal electric utility as of May 2, 1997.
- (6) “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 does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 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 (6) for use in fuel cells; and
 - (i) the renewable energy fraction from the sources identified in subsections (6)(a) through (6)(h) of electricity production from a multiple-fuel process with fossil fuels.
- (7) “Local owners” means:
- (a) Montana residents or entities composed of Montana residents;
 - (b) Montana small businesses;
 - (c) Montana nonprofit organizations;
 - (d) Montana-based tribal councils;
 - (e) Montana political subdivisions or local governments;
 - (f) Montana-based cooperatives other than cooperative utilities; or
 - (g) any combination of the individuals or entities listed in subsections (7)(a) through (7)(f).
- (8) “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.
- (9) “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.
- (10) “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 4. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in subsection (11) and [section 7], a graduated renewable energy standard is established for public utilities as provided in subsections (2) through (4).

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility 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 shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) 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 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility 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 shall, for any given compliance year, calculate its procurement requirement based on the public utility's previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility 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 established in subsections (2) through (4), a public utility 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 may not resell renewable energy credits and count those sold credits against the public utility'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(4) may not be applied against a public utility's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in [sections 1 through 8] limits a public utility from exceeding the standards established in subsections (2) through (4).

(9) If a public utility exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility 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 subsection (11), if a public utility is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility 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).

(11) A public utility 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 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

(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 has undertaken all reasonable steps to mitigate the reliability concerns.

Section 5. Procurement — cost recovery — reporting. (1) In meeting the requirements of [sections 1 through 8], a public utility shall:

(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in [section 4].

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of [sections 1 through 8] are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in [sections 1 through 8] limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the

public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

- (a) January 1, 2007, for the standard required in [section 4(2)];
- (b) June 1, 2008, for the standard required in [section 4(3)];
- (c) June 1, 2013, for the standard required in [section 4(4)]; and
- (d) any additional future dates as required by the commission.

(6) A public utility shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with [sections 1 through 8] for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

Section 6. Commission authority — rulemaking authority. (1) The commission has the authority to generally implement and enforce the provisions of [sections 1 through 8].

(2) The commission shall adopt rules before June 1, 2006, to:

- (a) select a renewable energy credit tracking system to verify compliance with [sections 1 through 8];
- (b) establish a system by which renewable resources become certified as eligible renewable resources;
- (c) define the process by which waivers from full compliance with [sections 1 through 8] may be granted;
- (d) establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;
- (e) define the requirements governing renewable energy procurement plans and annual reports; and
- (f) generally implement and enforce the provisions of [sections 1 through 8].

Section 7. Cost caps. (1) A public utility that has restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the eligible renewable resource has demonstrated through a competitive bidding process that the total cost of electricity from that eligible resource, including the associated cost of ancillary services necessary to manage the transmission grid and firm the resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.

(2) A public utility that has not restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the cost per kilowatt hour of the generation from the renewable resource does not exceed by more than 15% the cost of power from any other alternate generating resource available to the public utility.

Section 8. Cooperative utility — exemption — standard. (1) A cooperative utility is exempt from the graduated renewable energy standard established in [section 4].

(2) Each governing body of a cooperative utility that has 5,000 or more customers is responsible for implementing and enforcing a renewable energy standard for that cooperative utility that recognizes the intent of the legislature

to encourage new renewable energy production and rural economic development, while taking into consideration the effect of the standard on rates, reliability, and financial resources.

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 8].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 458

[SB 507]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; PROVIDING DEFINITIONS; CLARIFYING THE ISSUING OF CERTIFICATES OF TITLE, REGISTRATION, AND LICENSE PLATE REQUIREMENTS FOR STREET RODS, SPECIALLY CONSTRUCTED VEHICLES, KIT VEHICLES, AND CUSTOM VEHICLES; AUTHORIZING CERTAIN CUSTOM VEHICLES AND STREET RODS NOT USED FOR GENERAL TRANSPORTATION PURPOSES TO DISPLAY ONLY A REAR LICENSE PLATE UPON PAYMENT OF A FEE; AMENDING SECTIONS 61-3-301, 61-3-411, 61-9-204, 61-9-407, AND 61-9-430, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "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.

(2) "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.

(3) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, to or from a car 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.

(4) (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.

(5) "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.

Section 2. Certificate of title — custom vehicle, street rod, kit vehicle, or specially constructed vehicle. (1) When a person applies for a certificate of title for a custom vehicle or street rod and a certificate of title is issued or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must provide:

(a) the model year and year of manufacture of the body of the vehicle that the custom vehicle or street rod resembles as the model year and year of manufacture for the custom vehicle or street rod;

(b) a vehicle description of the custom vehicle or street rod if the vehicle is a custom vehicle built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year or a street rod built to resemble a vehicle manufactured before 1949; and

(c) if there is no manufacturer's certificate of origin for the custom vehicle or street rod, the vehicle identification number from the chassis or frame of the custom vehicle or street rod or a state-assigned vehicle identification number.

(2) When a person applies for a certificate of title for a kit vehicle, excluding a kit vehicle that qualifies as a custom vehicle or street rod, and a certificate of title is issued or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must list:

(a) the model year and year of manufacture as contained on the manufacturer's certificate of origin for the kit vehicle or, if a manufacturer's certificate of origin does not exist, the calendar year in which application for title was made;

(b) a vehicle description of the kit vehicle; and

(c) in absence of a manufacturer's certificate of origin for the kit vehicle, the vehicle identification number from the chassis or frame of the donor vehicle or a state-assigned vehicle identification number.

(3) When a person applies for a certificate of title for a specially constructed vehicle and a certificate of title is issued or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must list:

(a) the model year and year of manufacture as the calendar year in which application for title was made;

(b) a vehicle description, as determined by the department, of the assembled or custom-built vehicle; and

(c) the vehicle identification number, if any, from the chassis or frame of the vehicle or a state-assigned vehicle identification number.

(4) Prior to assignment of a state-assigned vehicle identification number or to confirm a vehicle identification number from the chassis or frame of a custom vehicle, street rod, or specially constructed vehicle, the department may require a vehicle inspection.

Section 3. Registration — custom vehicle, street rod, kit vehicle, or specially constructed vehicle. (1) (a) A custom vehicle or street rod:

(i) that is more than 30 years old may be registered under 61-3-411 as a collector's item; or

(ii) may be registered, depending on the vehicle type, as a motor home, a bus, a truck having a manufacturer's rated capacity of more than 1 ton, a truck tractor, or a light vehicle upon payment of the registration fee required in 61-3-321, the applicable fee or fee in lieu of tax provided for in 61-3-522, 61-3-529, or 61-3-560 through 61-3-562, and if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) The owner of a custom vehicle or street rod that is originally registered under subsection (1)(a) or that was registered prior to January 1, 2006, may be authorized to operate the custom vehicle or street rod while displaying only one license plate on the rear exterior of the vehicle if the owner certifies that the custom vehicle or street rod is not used for general transportation purposes and pays an additional \$10 fee, to be deposited in the state general fund.

(c) (i) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(i), either a set of pioneer or vintage license plates, as described in 61-3-411(2), or a set of original Montana license plates, as allowed under 61-3-412(1), must be assigned and issued to the custom vehicle or street rod.

(ii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and unless the owner has applied for personalized license plates, special license plates for military personnel, veterans, or spouses, collegiate plates, or generic specialty license plates or has met the requirements of subsection (1)(b), a set of standard license plates must be assigned to the vehicle under 61-3-331.

(iii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and if the owner of a custom vehicle or street rod has met the requirements of subsection (1)(b), a single license plate, including a personalized standard license plate, special license plate for military personnel, veterans, or spouses, collegiate plate, or generic specialty license plate, if otherwise available to the vehicle owner or vehicle type, may be issued for the custom vehicle or street rod.

(2) (a) The owner of a kit vehicle shall pay the registration fees provided for in 61-3-321, the light vehicle registration fee provided for in 61-3-560 and 61-3-561, and if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a kit vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the kit vehicle under 61-3-331.

(3) (a) Depending on whether the specially constructed vehicle is a motor home, bus, truck having a manufacturer's rated capacity of more than 1 ton, truck tractor, or light vehicle, the owner of a specially constructed vehicle shall pay the registration fees provided for in 61-3-321, any registration fee or fee in lieu of tax provided for in 61-3-522, 61-3-529, 61-3-560, and 61-3-561, and if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a specially constructed vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the specially constructed vehicle under 61-3-331.

Section 4. Section 61-3-301, MCA, is amended to read:

“61-3-301. Registration — license plate required — display. (1) (a) Except as otherwise provided in this chapter subsection (1)(b), a person may not operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear. A person may not display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(b) *A custom vehicle or street rod registered under [section 3(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.*

(2) A person may not purchase or display on a vehicle a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county of the person's permanent residence at the time of application for registration. However, the owner of a motor vehicle requiring a license plate on a motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to:

(a) display license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of number plates issued under 61-3-332(4)(a) or special license plates issued under 61-3-332(10) or 61-3-421 more than 18 months after a new design of number plates or special license plates has been issued, except as provided in 61-3-332(4)(c) and (4)(d), 61-3-448, or 61-3-468.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to the registration fee or fee in lieu of tax under 61-3-520.

(5) A person violating these provisions is guilty of a misdemeanor and is subject to the penalty prescribed in 61-3-601.

(6) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front and the rear bumper of a motor vehicle equipped with front and rear bumpers; or

(b) other clearly visible locations on the front and the rear exteriors of a motor vehicle."

Section 5. Section 61-3-411, MCA, is amended to read:

"61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item. (1) An owner of a motor vehicle that is more than 30 years old and that is used solely as a collector's item and *is not used* for general transportation purposes may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom *the vehicle was* purchased;

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(d) that the vehicle is owned and operated solely as a collector's item and *is not used* for general transportation purposes.

(2) Upon receipt of the application for registration and payment of the registration fees, including fees in lieu of tax, the department shall file the application and register the motor vehicle in the manner specified in 61-3-303 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(3) The year of issuance may not be shown on the plates.

(4) Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is

in existence and owned by the initial registrant. ~~Upon sale of the motor vehicle, the purchaser shall renew the registration and pay a license renewal fee of \$10 for a vehicle weighing more than 2,850 pounds and \$5 for a vehicle weighing 2,850 pounds or less.~~

Section 6. Section 61-9-204, MCA, is amended to read:

“61-9-204. Taillamps. (1) A motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle that is being drawn at the end of a combination of vehicles must be equipped with at least one properly functioning taillamp mounted on the rear that emits a red light plainly visible from a distance of 500 feet to the rear, except that in the case of a combination of vehicles, only the taillamp on the rearmost vehicle need actually be seen from the distance specified. The vehicles mentioned in this subsection, other than a motorcycle, quadricycle, motor-driven cycle, or truck tractor, registered in this state and manufactured or assembled after January 1, 1956, must be equipped with at least two properly functioning taillamps mounted on the rear that emit a red light plainly visible from a distance of 1,000 feet to the rear of the vehicle.

(2) A taillamp upon a vehicle must be located at a height of not more than 72 inches or less than 15 inches.

(3) Either a taillamp or a separate lamp must illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. A taillamp or taillamps, together with a separate lamp for illuminating the rear registration plate, must be lighted whenever the headlamps are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but the motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps.

(5) A person may not operate a motor vehicle on a highway with taillamps that are covered by a lens or a plastic cover or with a tinted or colored material, substance, system, or component placed on or in front of rear lamps, taillamps, license plate lamps, or rear lamp combinations that obscures the taillamps or diminishes the distance of visibility required by this section.

(6) ~~This section does not prohibit a vehicle manufactured prior to 1960 from being equipped with a taillamp that includes within the red cover a center lens that is blue in color.~~ (a) *A custom vehicle or street rod may use a blue dot taillight, as defined in subsection (6)(b), as a stop lamp, a rear signal lamp, or a rear reflector.*

(b) *“Blue dot taillight” means a red lamp installed in the rear of a motor vehicle containing a blue or purple insert that is not more than 1 inch in diameter.”*

Section 7. Section 61-9-407, MCA, is amended to read:

“61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location. (1) A person may not move, or permit to be moved, a vehicle, except a motorcycle, quadricycle, motor-driven cycle, or farm tractor, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of the vehicle with fenders, splash aprons, or flaps. The fenders, splash aprons, or flaps must be designed, constructed, and attached to the vehicle in a manner that arrests and deflects

dirt, mud, water, rocks, and other substances that may be picked up by the rear wheels of the vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the fenders must extend in full width from a point above and forward of the center of the tire or tires over and to the rear of the tires.

(b) If the vehicle is equipped with splash aprons or flaps, the splash aprons or flaps must extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of the tire or tires and to the rear of the tires.

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight or rating, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight or rating, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1), must be constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, the fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires; and

(b) the fender, splash apron, or flap is capable at all times of arresting and deflecting dirt, mud, water, or other substance that may be picked up and carried by the wheel or wheels.

(3) This section does not apply to *a street rod vehicle, as defined in [section 1]*, motor vehicles not originally equipped with fenders, splash aprons, or flaps, or motor vehicles for which fenders, splash aprons, or flaps were not required by federal law or regulation at the time of manufacture.

~~(4) For purposes of 61-9-430 and this section, "street rod" means a vehicle manufactured before 1949 that has been modified in body style or design.~~

Section 8. Section 61-9-430, MCA, is amended to read:

"61-9-430. Bumpers. (1) A motor vehicle of less than 10,000 pounds gross vehicle weight or rating registered in Montana, except a motorcycle, a quadricycle, a motor-driven cycle, or a farm tractor, must be equipped with a front bumper and, unless the vehicle is equipped with work-performing features that make installation impractical or unnecessary, with a rear bumper.

(2) This section does not apply to *a street rod vehicle, as defined in 61-9-407(4) [section 1]*, vehicles not originally equipped with front or rear bumpers, or vehicles for which bumpers were not required by federal law or regulation at the time of manufacture."

Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, and the provisions of Title 61, chapter 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions of Title 61, chapter 3, part 3, apply to [section 3].

Section 10. Coordination instruction. If both Senate Bill No. 285 and [this act] are passed and approved, then subsection (1)(b) of 61-3-411 in [this act] must read as follows:

“(b) the name and address of the person from whom the motor vehicle, trailer, semitrailer, or pole trailer was purchased;”.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 459

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2005, 2006, AND 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
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Judiciary

District Court Operations

Safe kids, safe communities	2005	\$25,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for safe kids, safe communities is authorized to continue into federal fiscal year 2005.

Office of the Governor

Executive Office Program

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for the extradition and transportation of criminals, for additional legal services, and for the economic development made in Montana study is authorized to continue into federal fiscal year 2007.

Mental Disabilities Board of Visitors

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for the additional operating costs is authorized to continue into federal fiscal year 2007.

Secretary of State

Business & Government Services

Electronic records project 2005 \$30,005 federal

All remaining fiscal year 2005 federal budget amendment authority for the Help America Vote Act is authorized to continue into federal fiscal year 2007.

Office of Public Instruction

State Level Activities

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for technical assistance for the No Child Left Behind Act and recognizing American Indian cultural heritage is authorized to continue into federal fiscal year 2007.

Local Education Activities

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds for technology programs, reading first, and vocational education is authorized to continue into federal fiscal year 2007.

Department of Justice

Legal Services Division

All remaining fiscal year 2005 federal budget amendment authority for the encourage to arrest project is authorized to continue into federal fiscal year 2006.

Highway Patrol Division

New entrant program 2005 \$400,000 federal

Division of Criminal Investigation

All remaining fiscal year 2005 federal budget amendment authority for bureau of justice assistance for drug enforcement is authorized to continue into state fiscal year 2007.

Forensic Science Division

All remaining fiscal year 2005 federal budget amendment authority for forensic casework DNA backlog reduction is authorized to continue into state fiscal year 2006.

Commissioner of Higher Education

Student Assistance Program

All remaining fiscal year 2005 federal budget amendment authority for the Jobs and Growth Tax Relief Reconciliation Act funds to be used for any unanticipated shortfall in existing student assistance programs is authorized to continue into federal fiscal year 2007.

Library Commission

Statewide Library Resources

All remaining fiscal year 2005 federal budget amendment authority for the development of an internet portal for input, processing, and database population for the environmental quality incentives program is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for recruiting and educating librarians is authorized to continue into state fiscal year 2007.

Historical Society

Administration Program

All remaining fiscal year 2005 federal budget amendment authority for the overhead for The Big Picture: Montana in the 20th Century is authorized to continue into federal fiscal year 2006.

Library Program

Advisory board administrative support program	2005	\$9,570	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Montana historical records advisory board's administrative support project is authorized to continue into state fiscal year 2006.

Museum Program

All remaining fiscal year 2005 federal budget amendment authority for The Big Picture: Montana in the 20th Century is authorized to continue into federal fiscal year 2006.

Historic Preservation Program

Access to bureau of land management state historic preservation databases	2005	\$10,000	federal
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National resources conservation service	2005	\$5,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for completing tasks to improve access to bureau of land management state historic preservation databases is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the national resources conservation service grant is authorized to continue into state fiscal year 2006.

Lewis and Clark Commission

Lewis and Clark national historic trail	2005	\$6,250	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Lewis and Clark national historic trail grant is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for further development, operation, maintenance, interpretation, and protection of the Lewis and Clark national historic trail and to coordinate and facilitate activities and projects associated with the bicentennial observance of the Lewis and Clark expedition is authorized to continue into federal fiscal year 2007.

Department of Fish, Wildlife, and Parks

Fisheries Division

All remaining fiscal year 2005 federal budget amendment authority for native prairie fish survey and inventory; aquatic nuisance species program coordination and activities; native species creel census and paddlefish monitoring; cooperative stream gauging on the Big Hole and Judith Rivers; the soft shell turtle project; Yellowstone cutthroat trout landowner outreach and technical assistance; the bureau of land management grant for population assessment of fluvial arctic grayling; the statewide wildlife grant for inventory and restoration actions for grayling, westslope cutthroat trout, and native lake

trout; and the bureau of land management grant for habitat restoration efforts for fluvial arctic grayling in the Big Hole River is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for Wedge Canyon fish monitoring; the United States fish and wildlife service grant for population assessments and monitoring of fluvial arctic grayling trout in the Big Hole, Sun, and Ruby Rivers; and the United States fish and wildlife service CCA grant for restoration work for the fluvial arctic grayling trout in the Big Hole, Sun, and Ruby Rivers is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for graduate student work on the design, construction, and installation of a fish screen on Lolo Creek and a second screen on the Clearwater River; the Thompson River road project; the construction of the siphon structure on the Republican canal; burbot status assessment on Missouri River; and Big Hole arctic grayling landowner outreach and technical assistance is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for biological data collection on pallid sturgeon in the Missouri River below Fort Peck dam; for a conservation geneticist; and for the seasonal movements and habitat use of native Yellowstone fish, turtles, and birds is authorized to continue into federal fiscal year 2007.

Wildlife Division

Chronic wasting disease survey, mule deer	2006	\$120,000	federal
	2007	\$120,000	federal

All remaining fiscal year 2005 federal budget amendment authority for sagebrush/shrub steppe ecosystem; sage grouse/leks; coordinated bird monitoring; monitor grizzly bear population for the northern continental divide ecosystem; birds and species of concern surveys in northeastern Montana; the elk calf mortality study; bear and mountain lion management; a mule deer survey; development of regional prairie dog abundance and distribution goals; swift fox conservation efforts; Burlington Northern Santa Fe endangered species grizzly bear habitat conservation planning; small mammal inventory of the swift fox prey base; and bat surveys and development of a bat conservation plan is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the development of a Montana wolf management plan and the administration of the forest legacy program is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the amphibian and aquatic reptile inventory and for the statewide small mammal survey and inventory is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for natural resource conservation service co-op positions; loon ecology project; delisting of the gray wolf in the northern rocky mountains; grizzly bear tracking; a bear management specialist; a chronic wasting disease survey for mule deer; the North American waterfowl management plan; and research for protection of long-term integrity of the northern Yellowstone winter range is authorized to continue into federal fiscal year 2007.

Parks Division

All remaining fiscal year 2005 federal budget amendment authority for Lewis and Clark bicentennial preparation is authorized to continue into state fiscal year 2006.

Capital Outlay

All remaining fiscal year 2005 federal budget amendment authority for the 3-mile wildlife management area and acquisition of land at the headwaters of the Bull River and Lake Creek watersheds is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the Swan Valley phase I legacy project is authorized to continue into state fiscal year 2007.

Department Management

Montana department of natural
resources and conservation
forested trust land habitat

conservation planning	2005	\$589,500	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Montana department of natural resources and conservation forested trust land habitat conservation planning is authorized to continue into federal fiscal year 2007.

Department of Environmental Quality

Planning, Prevention, and Assistance Division

Biological analyses for support of reassessment monitoring	2005	\$185,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the administration of state and tribal assistance grants for funding water and wastewater projects and the biological analyses for support of reassessment monitoring grant is authorized to continue into state fiscal year 2007.

Remediation Division

Libby asbestos/Troy superfund grant	2005	\$20,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the abandoned mine lands program is authorized to continue into state fiscal year 2006.

Department of Livestock

Milk and Egg Program

National conference of interstate milk shippers	2005	\$2,500	federal
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Department of Natural Resources and Conservation

Conservation and Resource Development Division

Conservation capacity funds to local conservation districts	2005	\$125,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for conservation capacity funds to local conservation districts is authorized to continue into state fiscal year 2006.

Water Resources Division

Community assistance national flood insurance	2005	\$74,213	federal
Water management activities in Montana	2005	\$50,000	federal
Big Hole grant	2005	\$99,214	federal
Gaging station	2005	\$31,016	federal

All remaining fiscal year 2005 federal budget amendment authority for community assistance national flood insurance is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the Big Hole grant is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for gaging stations is authorized to continue into federal fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for water management planning and implementation in the Milk River basin and for water management activities in Montana is authorized to continue into federal fiscal year 2006.

Forestry/Trust Lands

Resource/conservation development grant	2005	\$24,000	federal
Rural fire assistance	2005	\$485,000	federal
Forest land enhancement	2005	\$85,000	federal
Habitat conservation plan	2005	\$384,443	federal
Reconstruct dispatch records	2005	\$3,000	federal

All remaining fiscal year 2005 federal budget amendment authority for the resource/conservation development grant and for reconstruct dispatch records is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the east fork of Swift Creek bridge replacement is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the state fire and general forest health assistance grant and the rural fire assistance grant is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the forest land enhancement grant; habitat conservation plan; fuel for schools program; fuel for schools administration; hazardous fuel reduction on nonfederal lands near national forest lands; and the concrete barriers project is authorized to continue into federal fiscal year 2007.

Department of Administration

Administrative Financial Services Division

Project safe neighborhood	2005	\$517,197	federal
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All remaining fiscal year 2005 federal budget amendment authority for project safe neighborhood is authorized to continue into federal fiscal year 2006.

Information Technical Services Division

Statewide radio system	2005	\$987,477	federal
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Emergency notification system	2005	\$1,987,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the emergency notification system is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the statewide radio system is authorized to continue into state fiscal year 2007.

Department of Agriculture

Central Management Division

Pesticide data program	2005	\$61,740	federal
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All remaining fiscal year 2005 federal budget amendment authority for the pesticide data program is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the noxious weed mitigation grant is authorized to continue into federal fiscal year 2006.

Agricultural Sciences Division

Nonfat dry milk action	2005	\$760,000	federal
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Pesticide data program	2005	\$248,260	federal
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Organic certification	2005	\$35,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the noxious weed mitigation grant is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the pesticide data program is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the organic certification grant is authorized to continue into federal fiscal year 2007.

Department of Corrections

Juvenile Corrections

Serious and violent offender reentry grant	2005	\$17,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for the serious and violent offender reentry grant is authorized to continue into state fiscal year 2006.

Department of Labor and Industry

Workforce Services Division

Talk America/Bresnan	2005	\$393,824	federal
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Flathead/Northwest

Multicompany	2005	\$452,920	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Talk America/Bresnan grant is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for the Flathead/Northwest Multicompany grant is authorized to continue into state fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for special Reed Act funds for legitimate Wagner-Peyser Act administration and employment services activities, unemployment insurance benefits, and unemployment insurance administration is authorized to continue into federal fiscal year 2007.

Unemployment Insurance Division

All remaining fiscal year 2005 federal budget amendment authority for the internet employer tax and wage reporting system is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for special Reed Act funds for legitimate Wagner-Peyser Act employment services activities, unemployment insurance benefits, and unemployment insurance administration is authorized to continue into federal fiscal year 2007.

Department of Military Affairs

Army National Guard Program

Distance learning	2005	\$43,470	federal
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All remaining fiscal year 2005 federal budget amendment authority for the distance learning grant is authorized to continue into federal fiscal year 2005.

Disaster and Emergency Services

Homeland security grant-05	2005	\$13,693,406	federal
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All remaining fiscal year 2005 federal budget amendment authority for homeland security grant-05 is authorized to continue into state fiscal year 2007.

All remaining fiscal year 2005 federal budget amendment authority for homeland security preparedness is authorized to continue into state fiscal year 2006.

Veterans' Affairs Program

Memorial wall construction	2005	\$85,000	federal
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Department of Public Health and Human Services

Human and Community Services

Food distribution, Indian reservations	2005	\$215,137	federal
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Food stamp benefits	2005	\$4,000,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for food distribution on Indian reservations is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2005 federal budget amendment authority for the low-income weatherization grant is authorized to continue into federal fiscal year 2006.

All remaining fiscal year 2005 federal budget amendment authority for the TANF high-performance bonus grant and the food stamp benefit grant is authorized to continue into federal fiscal year 2007.

Child and Family Services

Chaffee education and training vouchers program	2005	\$117,750	federal
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All remaining fiscal year 2005 federal budget amendment authority for the Chaffee education and training vouchers program is authorized to continue into federal fiscal year 2005.

Disability Services Division

Disability services donation	2005	\$1,000	state special revenue
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IDEA enhancement	2005	\$350,000	federal
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All remaining fiscal year 2005 federal budget amendment authority for IDEA enhancement is authorized to continue into federal fiscal year 2005.

Public Health and Safety Division

All remaining fiscal year 2005 federal budget amendment authority for rural access to emergency devices is authorized to continue into federal fiscal year 2006.

Senior and Long-Term Care Services

All remaining fiscal year 2005 federal budget amendment authority for aging and disability resource center program funding and for Montana's independence plus initiative is authorized to continue into federal fiscal year 2006.

Addictive and Mental Disorders

All remaining fiscal year 2005 federal budget amendment authority for the community incentive program enhancement project is authorized to continue into federal fiscal year 2006.

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

Approved April 28, 2005

CHAPTER NO. 460

[HB 18]

AN ACT EXTENDING THE DURATION OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REDUCING THE REQUIRED QUORUM FOR THE COMMISSION FROM SEVEN TO SIX; PROVIDING AN APPROPRIATION; AMENDING SECTION 90-1-131, MCA, SECTION 19, CHAPTER 512, LAWS OF 1999, AND SECTION 5, CHAPTER 69, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 90-1-131, MCA, is amended to read:

“90-1-131. (Temporary) State-tribal economic development commission — composition — compensation for members. (1) There is a state-tribal economic development commission administratively attached to the office of the governor as prescribed in 2-15-121.

(2) The commission is composed of ~~10~~ 10 members, each appointed by the governor to 3-year staggered terms commencing on July 1 of each year of appointment, and must include:

- (a) the state coordinator of Indian affairs;
- (b) one member from the department of commerce;

~~(c)~~(c) one member from each of the seven federally recognized tribes in Montana and one member from the Little Shell band of Chippewa Indians. A tribal government may advertise for individuals interested in serving on the

commission and develop a list of applicants from which it may choose its nominee to recommend to the governor. In place of choosing from a list of applicants, a tribal government may select an elected tribal official to recommend for membership on the commission. If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) ~~Seven~~ Six members of the commission constitute a quorum, and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.

(5) Any vacancy on the commission must be filled in the same manner as the original appointment.

(6) Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503. (Terminates June 30, ~~2005~~ 2009—~~sec. 5, Ch. 69, L. 2001.~~)”

Section 2. Appropriation. (1) There is appropriated for the biennium beginning July 1, 2005, to the state-tribal economic development commission from the state special revenue account established in 90-1-135 \$120,000 for the purpose of funding the commission’s activities, including but not limited to those specified in subsection (1).

(2) Money received in federal programs or grants that is deposited in the federal special revenue account established in 90-1-135 is appropriated for the biennium beginning July 1, 2005, in an amount not to exceed \$2 million to the state-tribal economic development commission for purposes consistent with 90-1-130 through 90-1-135.

(3) The appropriations in this section are biennial.

Section 3. Section 19, Chapter 512, Laws of 1999, is amended to read:

“**Section 19. Termination.** [This act] terminates June 30, ~~2001~~ 2009.”

Section 4. Section 5, Chapter 69, Laws of 2001, is amended to read:

“**Section 5.** Section 19, Chapter 512, Laws of 1999, is amended to read:

“**Section 19. Termination.** [This act] terminates June 30, ~~2001~~ 2005 2009.””

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 band of Chippewa.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 461

[HB 60]

AN ACT ESTABLISHING A DECONTAMINATION STANDARD FOR THE CLEANUP OF INDOOR PROPERTY CONTAMINATED BY THE CLANDESTINE MANUFACTURE OF METHAMPHETAMINE; PROVIDING

FOR RULEMAKING AUTHORITY TO CHANGE THE STANDARD OR TO ADOPT SIMILAR STANDARDS FOR PRECURSORS TO METHAMPHETAMINE TO PROTECT HUMAN HEALTH; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE MINIMUM STANDARDS AND REQUIREMENTS FOR CERTIFYING PERSONS TO CONDUCT METHAMPHETAMINE LAB REMEDIATION ACTIVITIES; REQUIRING NOTICE TO SUBSEQUENT OCCUPANTS OF CONTAMINATED INHABITABLE PROPERTY UNDER CERTAIN CONDITIONS; PROVIDING REPORTING REQUIREMENTS; AND PROVIDING CIVIL IMMUNITY FOR A PROPERTY OWNER AND OWNER'S AGENT IN CERTAIN INSTANCES.

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

Section 1. Finding and purpose. The legislature finds that some properties are being contaminated with hazardous chemical residues created by the manufacture of methamphetamine. Innocent members of the public may be harmed when they are unknowingly exposed to these residues if the properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by the lack of a decontamination standard. The purpose of [sections 1 through 6] is to protect the public health, safety, and welfare by providing specific cleanup standards and authorizing the department to establish a voluntary program that will provide for a property decontamination process that will meet state standards.

Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 6], the following definitions apply:

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

(2) (a) "Inhabitable property" means any building or structure used as a clandestine methamphetamine drug lab that is intended to be primarily occupied by people, either as a dwelling or a business, including a storage facility, mobile home, or recreational vehicle, that may be sold, leased, or rented for any length of time.

(b) The term does not mean any water system, sewer system, land, or water outside of a building or structure described in subsection (2)(a).

(3) "Surface material" means any porous or nonporous substance common to the interior of a building or structure, including but not limited to ceilings and walls, window coverings, floors and floor coverings, counters, furniture, heating and cooling duct work, and any other surfaces to which inhabitants of the building or structure may be exposed.

Section 3. Decontamination standards — rulemaking authority — samples. (1) The decontamination standard for methamphetamine inside inhabitable property is less than or equal to 0.1 micrograms of methamphetamine per 100 square centimeters of surface material unless a different standard is adopted by the department by rule to protect human health. The department may adopt standards by rule for precursors to methamphetamine that are consistent with the standard for methamphetamine.

(2) (a) The department may by rule establish the number and locations of surface material samples to be collected based on the circumstances of the contamination and acceptable testing methods.

(b) In the absence of a rule described in subsection (2)(a), at least three samples must be collected from the surface material most likely to be contaminated at each property.

Section 4. Contractor certification — department authority. (1) The department is authorized to establish by rule minimum standards for the training and certification of contractors and their employees who are to perform the assessment or remediation of inhabitable property contaminated by methamphetamine residues.

(2) The department may train and test or may approve courses to train and test contractors and their employees in the proper methods of assessing, remediating, and testing inhabitable property contaminated by methamphetamine residues. If the department conducts the training and testing of contractors and their employees, it may adopt rules to provide for the assessment of reasonable fees to cover the state's costs of providing the training and testing.

(3) The department shall establish by rule procedures for the certification of contractors and their employees, including procedures for the decertification of contractors and their employees for cause. The rules may provide for the assessment of reasonable fees to cover the cost of the contractor certification program.

(4) Any contractor and the contractor's employees certified to perform the remediation of inhabitable property in any other state are approved for certification in Montana unless the department determines that the certification process in the other state is not substantially similar to the minimum certification standards established by the department.

(5) The department shall maintain a list of certified contractors and shall make the list available to local health officials, law enforcement officials, and the public.

Section 5. Occupant notice by owner of inhabitable property — immunity. (1) An owner of inhabitable property that is known by the owner to have been used as a clandestine methamphetamine drug lab shall notify in writing any subsequent occupant or purchaser of the inhabitable property of that fact if the inhabitable property has not been remediated to the standards established in [section 3] by a contractor who is certified in accordance with [section 4].

(2) An owner or an owner's agent referred to in subsection (1) may provide notice to a subsequent occupant or purchaser that the owner or the owner's agent has submitted:

(a) documentation to the department by a contractor who is certified pursuant to [section 4] that the inhabitable property has been remediated to the standards established in [section 3]; or

(b) documentation by a certified contractor that the property meets the decontamination standards without decontamination.

(3) Notice as required or authorized in this section must occur before agreement to a lease or sale of the inhabitable property.

(4) If the department has confirmed that the decontamination standard provided for in [section 3] has been met and if notice has been given as provided in subsections (2) and (3), the owner and the owner's agent are not liable in any

action brought by a person who has been given notice that is based on the presence of methamphetamine in an inhabitable property.

(5) The immunity provided for in subsection (4) does not apply to an owner or an owner's agent who caused the methamphetamine contamination.

Section 6. Reporting requirements. (1) Whenever a state or local law enforcement agency becomes aware that an inhabitable property has been contaminated by its use as a clandestine methamphetamine drug lab, the agency shall report the contamination to the department and to the local health officer.

(2) The department shall maintain a list of inhabitable property that has been reported as contaminated, and the list must be made available to the public through a website except as provided in subsection (3).

(3) Upon confirmation by the department that an inhabitable property has been properly remediated to the standards established in [section 3] or that the inhabitable property meets the decontamination standards without decontamination, the department shall remove the inhabitable property from the list required in subsection (2). The department shall provide written notification to the local health officer and the property owner of record when the documentation shows that the inhabitable property has been properly assessed or remediated.

(4) The department may adopt rules establishing reasonable requirements for the sufficiency of documentation to be provided by a certified contractor.

(5) Notwithstanding any other provision of law, once an inhabitable property has been removed from the list required in subsection (2), a property owner, landlord, or real estate agent is not required to report or otherwise disclose the past contamination.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified in Title 75, chapter 10.

Approved April 28, 2005

CHAPTER NO. 462

[HB 63]

AN ACT GENERALLY REVISING SCHOOL FINANCE LAWS; ALLOWING SCHOOL DISTRICTS TO LEASE PERSONAL PROPERTY; EXPANDING THE USES FOR CERTAIN SCHOOL DISTRICT FUNDS; CHANGING A BUDGET DEADLINE FOR JOINT DISTRICTS; INCREASING THE ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; PROVIDING FOR 3-YEAR AVERAGING OF ANB FOR SCHOOL DISTRICTS WITH DECLINING ENROLLMENT FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; ALLOWING A SCHOOL DISTRICT TO PERMISSIVELY LEVY UP TO THE SAME OVER-BASE PROPERTY TAX REVENUE LEVIED IN THE PREVIOUS FISCAL YEAR; REVISING CERTAIN CALCULATIONS FOR GUARANTEED TAX BASE FUNDING; REVISING THE LIMITATIONS ON SCHOOL DISTRICT BONDED INDEBTEDNESS; CONFORMING CERTAIN STATUTES TO CURRENT LAW; REMOVING A REFERENCE TO A ONE-TIME-ONLY STATE PAYMENT TO SCHOOL DISTRICTS; TEMPORARILY EXTENDING SCHOOL ELECTION DEADLINES;

PROVIDING FOR INTERDISTRICT AGREEMENTS FOR FUND TRANSFERS BY FEBRUARY 1 OF THE CURRENT FISCAL YEAR; AMENDING SECTIONS 20-5-323, 20-6-607, 20-7-102, 20-9-130, 20-9-131, 20-9-142, 20-9-151, 20-9-152, 20-9-306, 20-9-308, 20-9-311, 20-9-314, 20-9-321, 20-9-353, 20-9-366, 20-9-406, AND 20-9-443, MCA; REPEALING SECTION 20-9-375, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES.

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

Section 1. Section 20-5-323, MCA, is amended to read:

“20-5-323. Tuition and transportation rates. (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child’s district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance.

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost;

(b) for a Montana resident student, 80% of the maximum per-ANB rate established in ~~20-9-306(10)~~ 20-9-306, received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this section may not exceed \$2,500 per ANB.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child’s district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or 25 cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

Section 2. Section 20-6-607, MCA, is amended to read:

"20-6-607. Leasing district property and disposition of any rentals.

The trustees of ~~any a~~ district may rent, or lease, ~~or let~~ any buildings, land, or facilities, or *personal property* of the district under the terms specified by the trustees. Any money collected for ~~such the~~ rental, or lease, ~~or letting~~ may, in the discretion of the trustees, be used for any proper school purpose and deposited in ~~such any~~ fund as the trustees consider appropriate."

Section 3. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of every school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may ~~only~~ be granted *only* to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(10)(e)(i)~~ *20-9-306(11)(c)(ii)*."

Section 4. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of every school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may ~~only~~ be granted *only* to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in ~~20-9-306(10)(e)(i)~~ ~~20-9-306(10)(c)(ii).~~"

Section 5. Section 20-9-130, MCA, is amended to read:

"20-9-130. District obligation for students in youth detention facility. A school district is responsible for providing funding for the education of students of the district who are detained in a youth detention facility. The school district's obligation must be funded from the district's tuition fund *or impact aid fund.*"

Section 6. Section 20-9-131, MCA, is amended to read:

"20-9-131. Final budget meeting. (1) On or before August 15, 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, ~~subject to 15-10-420,~~ determine the amounts to be raised by tax levies for the district not later than the fourth Monday in August and before 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 days."

Section 7. 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, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. ~~Subject to 15-10-420, it~~ *It* is the duty of the board of county commissioners 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 8. 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 ~~and subject to 15-10-420,~~ 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 ~~second~~ *fourth* Monday in August.”

Section 9. 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 ~~second~~ *fourth* Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall, ~~subject to 15-10-420,~~ 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 10. Section 20-9-306, MCA, is amended to read:

“20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “BASE” means base amount for school equity.

(2) “BASE aid” means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment.

(3) “BASE budget” means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and ~~up to~~ 140% of the special education allowable cost payment.

(4) “BASE budget levy” means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) “BASE funding program” means the state program for the equitable distribution of the state’s share of the cost of Montana’s basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) “Basic entitlement” means:

(a) ~~\$220,646~~ *\$225,273* for each high school district;

(b) ~~\$10,850~~ *\$20,275* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school

or middle school, calculated as follows *using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(i) ~~\$19,859~~ \$20,275 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~\$220,646~~ \$225,273 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "*Budget unit*" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

~~(7)~~(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

~~(8)~~(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

~~(9)~~(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

~~(10)~~(11) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations *and using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$5,371~~ \$5,584 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~\$4,031~~ \$4,366 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~\$4,031~~ \$4,366 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~\$5,371~~ \$5,584 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 11. Section 20-9-306, MCA, is amended to read:

“20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “BASE” means base amount for school equity.

(2) “BASE aid” means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment.

(3) “BASE budget” means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and ~~up to~~ 140% of the special education allowable cost payment.

(4) “BASE budget levy” means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) “BASE funding program” means the state program for the equitable distribution of the state’s share of the cost of Montana’s basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) “Basic entitlement” means:

(a) ~~\$220,646~~ \$230,199 for each high school district;

(b) ~~\$19,859~~ \$20,718 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows *using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(i) ~~\$19,859~~ \$20,718 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~\$220,646~~ \$230,199 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) “Budget unit” means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

~~(7)~~(8) “Direct state aid” means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

~~(8)~~(9) “Maximum general fund budget” means a district’s general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district’s special education allowable cost expenditures to the district’s special education allowable cost

payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

~~(9)~~(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

~~(10)~~(11) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations *and using either the current year ANB or the 3-year ANB provided for in 20-9-311*:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$5,371~~ \$5,704 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~\$4,031~~ \$4,456 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~\$4,031~~ \$4,456 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~\$5,371~~ \$5,704 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 12. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) (a) (i) Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of ~~5~~ 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the ~~5-year~~ 5-year period. ~~A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:~~

~~(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;~~

~~(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and~~

~~(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.~~

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) ~~The~~ *Except as provided in 20-9-353(8), the* trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 13. Section 20-9-311, MCA, is amended to read:

“20-9-311. Calculation of average number belonging (ANB) — 3-year averaging. (1) Average number belonging (ANB) must be computed *for each budget unit* as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that *the ANB is calculated as a separate budget unit* when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated ~~separately~~ *as a separate budget unit* for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time

pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) *For an elementary or high school district that has been in existence for 3 or more years, the district's maximum general fund budget and BASE budget for the ensuing year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.*

(b) *For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing year must be calculated separately for the elementary and high school programs pursuant to subsection (10)(a) and then combined.*

(11) *The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:*

(a) *adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and*

(b) *dividing the sum calculated under subsection (11)(a) by three."*

Section 14. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic

entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage ~~increase~~ by which the estimated enrollment ~~increase~~ exceeds the ~~current~~ enrollment *used for the budgeted ANB*; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is ~~at least greater than 6%~~.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is *determined using* the difference between the enrollment for the ensuing school fiscal year and 106% of the ~~current~~ enrollment *used to calculate the budgeted ANB*. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than ~~the average number belonging used for BASE funding program and entitlement calculations~~ *the enrollment used to determine budgeted ANB*, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations, *as provided in subsection (5)*, using the actual ~~average number belonging~~ *enrollment in place of the estimated enrollment*.

(c) All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4).”

Section 15. Section 20-9-321, MCA, is amended to read:

“20-9-321. Allowable cost payment for special education. (1) *As used in this section, “ANB” means the current year ANB.*

(2) *The 3-year average ANB provided for in 20-9-311(10) does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.*

(3) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

~~(2)~~(4) (a) The total special education allocation must be distributed according to the following formula:

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives and joint boards for administration and travel.

(b) Special education allowable cost payments outlined in subsection ~~(2)(a)~~ (4)(a) must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection ~~(2)(a)(i)~~ (4)(a)(i) must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection ~~(2)(a)(ii)~~ (4)(a)(ii) must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative or joint board that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board.

(iii) If a district’s allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection ~~(4)(6)~~ (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To

ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection ~~(2)(a)(iii)~~ ~~(4)(a)(iii)~~, reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection ~~(2)(a)(iv)~~ ~~(4)(a)(iv)~~, three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative or joint board and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

~~(3)~~(5) The superintendent of public instruction shall adopt rules necessary to implement this section.

~~(4)~~(6) A district shall provide a 25% local contribution for special education, matching every \$3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

~~(5)~~(7) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

~~(6)~~(8) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred."

Section 16. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt:

(a) an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in 20-9-308(2); or

(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3).

(2) ~~When~~ *When* the trustees of the district propose to adopt an over-BASE budget under subsection (1)(a), any increase in local property taxes authorized by 20-9-308(5) must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) ~~When~~ *Except as provided in subsection (8), when* the trustees of a district propose to adopt the general fund budget amount in excess of the maximum

general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

- FOR budget authority and any levy.
- AGAINST budget authority and any levy.

(4) If the election on any additional financing or budget authority for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year.

(6) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

(7) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount or an amount in excess of the maximum general fund budget amount for the district, as allowed by 20-9-308(3), to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (6) of this section.

(8) *The trustees of the district may permissively levy up to the same over-BASE property tax revenue levied in the prior fiscal year.*

Section 17. Section 20-9-366, MCA, is amended to read:

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

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

(2) (a) “District guaranteed tax base ratio” for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district’s current year BASE budget amount less direct state aid *and the state special education allowable cost payment.*

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

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

(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

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

Section 18. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, ~~and~~ registered warrants, *outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district*, is 45% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, ~~and~~ registered warrants, *outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district*, is up to 90% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the ~~corresponding statewide mill value per elementary ANB or per high school ANB~~ *facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366* may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, ~~and~~ registered warrants, *outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district*, is 45% of the corresponding ~~statewide~~ *facility guaranteed* mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the ~~statewide~~ *facility guaranteed* mill value per elementary ANB times 1,000 times the elementary ANB of the district and the ~~statewide~~ *facility guaranteed* mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 19. Section 20-9-443, MCA, is amended to read:

“20-9-443. Disposition of remaining debt service fund. (1) Except as provided in subsection (2), when all of the bonds, ~~and~~ bond interest, *and special improvement district obligations* of a school district have been fully paid, all money remaining in the debt service fund for the school district and all money that may come into the debt service fund from the payment of the delinquent taxes must be transferred by the county treasurer to the building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school district, ~~provided that if~~ the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district's impact aid account established pursuant to 20-9-514.”

Section 20. Extension of school election deadlines. In order to allow for the more orderly and efficient conduct of the regular school elections scheduled for May 3, 2005, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2005 only, a school district may limit the regular school election scheduled for May 3, 2005, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. In addition, all statutory deadlines for the May 3, 2005, regular school elections that fall on or before April 15 are extended to April 25, 2005, except that the timeline for posting the election notice is changed to April 25, 2005, through May 3, 2005.

Section 21. Interdistrict agreements — fund transfers. (1) The trustees of any two school districts that have unified pursuant to 20-6-312, any two school districts that have created a joint board of trustees pursuant to 20-3-361, or a high school district and any elementary school district associated with that high school district may enter into an interdistrict agreement to provide for the joint funding and operation and maintenance of both districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. An agreement must be approved by the board of trustees of both districts by February 1 of the current fiscal year.

(2) All expenditures in support of the interdistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each district may transfer funds into the interlocal cooperative fund from the general fund of the district. Transfers to the interlocal cooperative fund from each school district are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund and must be completed by February 1 of the current fiscal year.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the general fund from which the transfer was made.

Section 22. Repealer. Section 20-9-375, MCA, is repealed.

Section 23. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20, chapter 3, part 3, apply to [section 21].

Section 24. Effective dates — applicability. (1) [Sections 1 and 12 through 15] are effective on passage and approval and apply to school budgets for the school fiscal years beginning on or after July 1, 2005.

(2) [Sections 2, 3, 5 through 9, and 17 through 25] are effective on passage and approval.

(3) [Section 4] is effective July 1, 2007.

(4) [Section 10] is effective July 1, 2005, and applies to school budgets for the school fiscal year beginning July 1, 2005.

(5) [Section 11] is effective July 1, 2006, and applies to school budgets for the school fiscal year beginning July 1, 2006.

(6) [Section 16] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the preparation of school budgets for the 2006 school fiscal year.

Section 25. Termination. (1) [Section 10] terminates June 30, 2006.

(2) [Sections 3 and 11 through 16] terminate June 30, 2007.

Approved April 28, 2005

CHAPTER NO. 463

[HB 83]

AN ACT REVISING THE SCHOOL DISTRICT TUITION LAWS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION FOR CHILDREN WHO ATTEND SCHOOL OUTSIDE OF THE DISTRICT OF RESIDENCE BECAUSE OF PLACEMENT IN FOSTER CARE OR A GROUP HOME; ELIMINATING THE REQUIREMENT THAT A SCHOOL DISTRICT REPORT THE NUMBER OF OUT-OF-DISTRICT STUDENTS ATTENDING SCHOOL IN THE DISTRICT BECAUSE OF GEOGRAPHIC CONDITIONS; ELIMINATING THE REQUIREMENT FOR THE COUNTY SUPERINTENDENT TO PAY TUITION ON BEHALF OF THE STATE UNDER CERTAIN CONDITIONS; ESTABLISHING A TUITION PAYMENT SCHEDULE FOR DISTRICTS THAT PAY TUITION; CLARIFYING WHERE A DISTRICT MUST CREDIT TUITION RECEIPTS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION AND TRANSPORTATION COSTS FOR A CHILD WITH A DISABILITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 20-3-205, 20-5-321, 20-5-324, 20-7-420, 20-9-212, 20-9-335, AND 20-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-3-205, MCA, is amended to read:

“20-3-205. Powers and duties. 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:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) 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;

(3) 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;

~~(4)~~ act on each tuition and transportation obligation submitted in accordance with the provisions of ~~20-5-323~~ and ~~20-5-324~~;

~~(5)~~(4) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

~~(6)~~(5) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

~~(7)~~(6) keep a transcript of the district boundaries of the county;

~~(8)~~(7) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

~~(9)~~(8) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

~~(10)~~(9) 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;

~~(11)~~(10) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

~~(12)~~(11) 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;

~~(13)~~(12) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

~~(14)~~(13) 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;

~~(15)~~(14) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

~~(16)~~(15) 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;

~~(17)~~(16) 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;

~~(18)~~(17) 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;

~~(19)~~(18) 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;

~~(20)~~(19) 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;

~~(21)~~(20) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

~~(22)~~(21) 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;

~~(23)~~(22) administer the oath of office to trustees without the receipt of pay for administering the oath;

~~(24)~~(23) 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;

~~(25)~~(24) 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:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

~~(26)~~(25) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.”

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; or

(b) (i) the child resides in a location where, ~~due to~~ *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(6)~~ 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.

(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 ~~choice~~ attendance shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. ~~The county superintendent shall approve the agreement for payment under 20-5-324(5).~~ *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, ~~due to~~ *because of* insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child.”

Section 3. Section 20-5-324, MCA, is amended to read:

“20-5-324. Tuition report and payment provisions — exemption. (1) ~~At~~ *Following* the close of the school term of each school fiscal year ~~and before July 15~~, the trustees of a district shall report to the ~~county~~ superintendent of public instruction:

(a) the name and district of residence of each child who ~~is attending~~ *attended* a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of ~~20-5-321(1)(b), 20-5-321(1)(d); or (1)(e) in the previous school year;~~

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child’s tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each ~~reported~~ *reported under the provisions of subsection (1)(a);*

(d) the names, districts of attendance, and amount of tuition ~~to be~~ *paid by* the district for resident students attending public schools out of state *in the previous school year;* and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools *in the previous school year.*

(2) ~~The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides. Subject to the limitations of 20-5-323, the superintendent of public instruction shall:~~

(a) *pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c), prorated for the actual days of enrollment;*

(b) *determine the total per-ANB entitlement for which the district would have been eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the prior year; and*

(c) *reimburse the district of residence for the state portion of the per-ANB entitlement for each student, not to exceed the district’s actual payment of tuition or fees for service for the student in the previous year.*

(3) ~~Before July 30, the county superintendent shall report the information in subsections (1)(d) and (1)(e) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection. In order to be eligible to receive payment under subsection (2), the trustees of the district of attendance shall submit the report required by subsection (1) within the school fiscal year following the year of attendance.~~

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) (i) When a child has approval to attend a school outside the child's district of residence *at the resident district's expense* under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(ii) *By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) out of the money realized to date from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.*

(b) When a child has approval to attend a school outside the child's district of residence *because of a parent's or guardian's request* under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

~~(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.~~

~~(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.~~

~~(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).~~

~~(9)(6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts to the district general fund and transportation receipts to the transportation fund.~~

(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for

that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

~~(b)~~(c) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(e)(d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(7) The reimbursements paid under subsection (2)(c) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

~~(4)~~(8) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.”

Section 4. Section 20-7-420, MCA, is amended to read:

“20-7-420. Residency requirements — financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child’s district of residence for special education purposes is the residence of the child’s parents or of the child’s guardian if the parents are deceased, 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 county of residence~~ *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 by a state agency in a foster care or group home licensed by the state. ~~The county of residence~~ *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 5. Section 20-9-212, MCA, is amended to read:

“20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

- (a) the basic county tax for elementary equalization;
- (b) the basic county tax for high school equalization;
- (c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned ~~and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7)~~, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).”

Section 6. Section 20-9-335, MCA, is amended to read:

“20-9-335. Formula for apportionment of county equalization money. (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the elementary and high school county equalization funds in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid ~~after the deduction of the county’s obligation for tuition paid under the provisions of 20-5-324(6) and (7).~~

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments.”

Section 7. Section 20-10-105, MCA, is amended to read:

“20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever ~~a county~~ *the state* is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.”

Section 8. Appropriation. There is appropriated \$336,000 from the general fund to the superintendent of public instruction for the biennium beginning July 1, 2005, to pay the tuition and transportation costs required under 20-5-324(2) and 20-7-420.

Section 9. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 464

[HB 102]

AN ACT DEPOSITING FEES FROM THE REGISTRATION OF CERTAIN VEHICLES AND DRIVER'S LICENSES TO THE STATE GENERAL FUND; STATUTORILY APPROPRIATING FROM THE STATE GENERAL FUND TO THE MONTANA HIGHWAY PATROL OFFICERS' RETIREMENT PENSION TRUST FUND THE AMOUNTS REQUIRED TO PAY CERTAIN SUPPLEMENTAL BENEFITS UNDER THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 15-1-122, 17-7-502, 19-6-401, 19-6-404, 19-6-709, 61-3-527, 61-3-530, 61-3-562, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. State contribution for supplemental benefits — statutory appropriation. The state shall annually contribute to the pension trust fund the lump-sum amount determined by the board as required to pay benefits under 19-6-709. The amount must be calculated based upon the number of individuals eligible as provided in 19-6-709(1) through (3) and based upon the amount of benefit for the eligible individuals as provided in 19-6-709(4)(a) through (4)(c). The amount is statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund.

Section 2. Section 15-1-122, MCA, is amended to read:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) ~~\$75,000 in fiscal year 2003;~~

~~(b)~~(a) \$0 in fiscal years 2004 and 2005;

(e)(b) \$3,050,205 in fiscal year 2006; and

~~(d)~~(c) in each succeeding fiscal year, the amount in subsection ~~(2)(e)~~ (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 in fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 in fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement

a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

~~(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:~~

~~(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and~~

~~(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;~~

~~(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;~~

~~(g)(f) to the search and rescue account provided for in 10-3-801:~~

~~(i) \$2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;~~

~~(ii) \$2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and~~

~~(iii) \$2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803; and~~

~~(h)(g) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).~~

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 3. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; ~~19-6-404; [section 1];~~ 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)”

Section 4. Section 19-6-401, MCA, is amended to read:

“19-6-401. Payments into pension trust fund. *There is a pension trust fund for the payment of benefits under the retirement system.* All appropriations made by the state, all contributions by members, in the amount specified, and all interest on and ~~increase of earnings from the investments and investment of money under in this pension trust fund, all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion~~

~~of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be deposited in the pension trust fund."~~

Section 5. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution — statutory appropriation. The state of Montana shall ~~annually~~ contribute to the pension trust fund an amount equal to 36.33% of the total compensation paid to the members from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members, *which is payable, as appropriated by the legislature, from the same source that is used to pay compensation to the members; and*

(2) an amount equal to 10.18% of the total compensation of the members, *which is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund."*

Section 6. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees.

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) The amount of fees transferred *statutorily appropriated to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4), and 61-3-562(1)(b) under [section 1]* must be distributed proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the

previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

Section 7. Section 61-3-527, MCA, is amended to read:

“61-3-527. One-time fee in lieu of tax for motorcycles and quadricycles — permanent registration. (1) (a) There is a one-time fee in lieu of property tax of \$20 in calendar year 2004 and, in each subsequent year, ~~\$40~~ \$41.25 imposed on motorcycles and quadricycles that are subject to one-time registration. The fee is in addition to registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle with special license plates issued under 61-3-415 shall pay an annual fee based on the age of the motorcycle or quadricycle and the size of the engine, according to the following schedule:

(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

- (i) less than 5 years old, \$30;
- (ii) 5 years old but less than 11 years old, \$15; and
- (iii) 11 years old and older, \$6.

(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

- (i) less than 5 years old, \$55;
- (ii) 5 years old but less than 11 years old, \$20; and
- (iii) 11 years old and older, \$6.

(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

- (i) less than 5 years old, \$90;
- (ii) 5 years old but less than 11 years old, \$50; and
- (iii) 11 years old and older, \$6.

(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer’s designated model year from the current calendar year.

(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

~~(4) A person who registers a motorcycle or quadricycle as provided in this section shall pay an additional one-time fee of \$1.25 at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$1.25 fee collected under this subsection from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.~~

~~(5)~~(4) Whenever a transfer of ownership of a motorcycle or quadricycle occurs, the one-time fees required under this section must be paid by the new

owner. (~~Subsection (4) terminates on occurrence of contingency — sec. 24, Ch. 191, L. 2001.~~)”

Section 8. Section 61-3-530, MCA, is amended to read:

“61-3-530. Fee for trailers — exception. (1) Except as provided in subsections (2) and (3), the owner of a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds shall pay the fee imposed pursuant to 61-3-521. The fee is a one-time fee and is:

(a) for a trailer, pole trailer, or semitrailer with a declared weight under 6,000 pounds, \$25 in calendar year 2004 and, in each subsequent year, ~~\$50~~ \$51.25; and

(b) for a trailer, pole trailer, or semitrailer with a declared weight of 6,000 pounds or more, \$65 in calendar year 2004 and, in each subsequent year, ~~\$130~~ \$131.25.

(2) This section does not apply to a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds and that:

(a) is registered through a proportional registration agreement under 61-3-721; or

(b) constitutes inventory of a trailer, pole trailer, or semitrailer dealership.

(3) Whenever a transfer of ownership of a trailer, pole trailer, or semitrailer described in subsection (1) occurs, the one-time fee required under subsection (1) must be paid by the new owner.

~~(4) A person who permanently registers a trailer, pole trailer, or semitrailer as provided in this section shall pay an additional one-time fee of \$1.25 at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$1.25 fee collected under this section from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.”~~

Section 9. Section 61-3-562, MCA, is amended to read:

“61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) Except as provided in subsection ~~(1)(c)~~ (1)(b), the owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a ~~\$50~~ \$52 registration fee, the applicable registration and license fees under 61-3-321 and 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b);

(iii) the former county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, special license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; and

(vi) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

~~(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle~~

registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(e)(b) The following series of license plates may not be used for purposes of permanent registration of a vehicle:

- (i) Montana national guard license plates issued under 61-3-458(2)(b);
- (ii) reserve armed forces license plates issued under 61-3-458(2)(c);
- (iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);
- (iv) amateur radio operator license plates issued under 61-3-422;
- (v) collegiate license plates issued under 61-3-465; and
- (vi) generic specialty license plates issued under 61-3-479.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the ~~\$50~~ \$52 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and file an application for registration under 61-3-303. ~~(Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)~~

Section 10. Section 61-5-121, MCA, is amended to read:

“61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

~~(a) The amount of 22.3% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.~~

~~(b)(a)~~ (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection ~~(1)(b)(i)~~ (1)(a)(i) must be deposited into the state general fund.

~~(e)(b)~~ (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection ~~(1)(e)(i)~~ (1)(b)(i) must be deposited into the state general fund.

~~(d)(c)~~ The amount of 20.7% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

~~(e)(d)~~ In addition to the amounts deposited pursuant to subsections ~~(1)(b)(ii)~~ (1)(a)(ii) and ~~(1)(e)(ii)~~ (1)(b)(ii), the amount of ~~54.5%~~ 76.8% of each driver's license fee and ~~62.5%~~ 87.5% of each duplicate driver's license fee must be deposited into the state general fund.

~~(f)(e)~~ If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

~~(g)(f)~~ The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections ~~(1)(b)(i)~~ (1)(a)(i) and ~~(1)(e)(i)~~ (1)(b)(i) into the county general fund. The county treasurer or agent shall then remit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the ~~account in the state special revenue fund, as provided in subsection (1)(a) state traffic education account established in 20-7-504, the state motorcycle safety account established in 20-25-1002,~~ and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections ~~(1)(a) and (1)(d) through (1)(g)~~ (1)(c) through (1)(f).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the ~~account in the state special revenue fund as provided in subsection (1)(a) state traffic education account established in 20-7-504, the state motorcycle safety account established in 20-25-1002,~~ the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections ~~(1)(a), (1)(b)(ii), (1)(e)(ii), and (1)(d) through (1)(g)~~ (1)(a)(ii), (1)(b)(ii), and (1)(c) through (1)(f)."

Section 11. Transfer of funds. On [the effective date of this act], the balance of money remaining in the state special revenue account for the highway patrol officers' retirement pension trust fund that was contained in 61-5-121 must be transferred to the state general fund.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 6, part 4, and the provisions of Title 19, chapter 6, part 4, apply to [section 1].

Section 13. Effective date. [This act] is effective July 1, 2005.

Section 14. Termination. The amendments to 19-6-709 and [section 1] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709.

Approved April 28, 2005

CHAPTER NO. 465

[HB 146]

AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 12] may be cited as the "Montana False Claims Act".

Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Section 3. False claims — procedures — penalties. (1) A person causing damages in excess of \$500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) In a civil action brought under [section 5 or 6], a court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to \$10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) Liability under this section is joint and several for any act committed by two or more persons.

(4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(5) A private citizen may not file a complaint or civil action:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

Section 4. Limitation of actions. A complaint or civil action may not be filed under [section 5 or 6] more than 3 years after the date on which an official of the governmental entity charged with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which the act occurred, whichever occurs first.

Section 5. Investigation and civil action by government attorney. A government attorney may investigate an alleged violation of [section 3] and file a civil action.

Section 6. Complaint by private citizen — civil action. (1) A private citizen may file with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney that includes a written disclosure of material evidence and information alleging violations.

(2) Within 60 days after receiving a notice and complaint, the government attorney may elect to file a civil action and may, for good cause shown, move the court for extensions of the time for filing an action.

(3) If the government attorney files a civil action, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a civil action within the time allowed under subsection (2), the private citizen may file a civil action.

(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under [sections 10 and 11] as if the government attorney had not intervened.

(5) After a private citizen files a civil action, no other private citizen may file a civil action based on the facts underlying the pending action.

Section 7. Dismissal of private citizen's civil action. On the motion of a government attorney, the court may dismiss a private citizen's civil action for good cause. If an intervening government attorney seeks dismissal of a private citizen's civil action, the private citizen must be notified by the government attorney of the filing of the motion to dismiss and must be given an opportunity to oppose the motion and present evidence at a hearing.

Section 8. Settlement. An action may be settled if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may present evidence at the settlement hearing.

Section 9. Burden of proof — effect of criminal conviction. (1) The plaintiff in an action under [section 5 or 6] shall prove each essential element of the cause of action, including damages, by a preponderance of the evidence.

(2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny the essential elements of the offense in an action under [section 5 or 6] that involves the same event or events as the criminal proceeding.

Section 10. Distribution of damages and civil penalty. If an action is settled or the governmental entity or private citizen prevails in an action:

(1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(2) filed by a private citizen either as plaintiff or as coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the court;

(4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(5) Unless otherwise provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of the state.

Section 11. Costs and attorney fees. A governmental entity in an action in which its government attorney filed a civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are

awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a civil action and who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.

Section 12. Prohibitions on employers — employee remedies. (1) A governmental entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of [section 3] or an action brought pursuant to [section 5 or 6].

(2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of [section 3].

(3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3).

Section 13. Repealer. Section 17-8-231, MCA, is repealed.

Section 14. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 466

[HB 159]

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES

AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES.

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 the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's 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 base period is the period applicable under the unemployment law of the paying state. 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 base period means 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", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the 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 year of a previously filed new claim. A subsequent benefit year may not be established 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 base period 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(4).

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

(9) "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, but 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 that has or had in its employ one or more individuals performing services for it 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 are required to 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, ~~or~~ 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 who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(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 it 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) ~~Notwithstanding subsection (17)(a), all~~ All universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any *tribal* subdivision; or subsidiary; or *any* business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(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; or

(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.*

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" ~~is~~ *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 member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) 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) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) 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) 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) 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) 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) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) 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) 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) 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) 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) 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) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien ~~admitted to the United States to perform agricultural labor pursuant to sections 214(e) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act 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) 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) 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; ~~or~~

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; *or*

(aa) 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.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) 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.

(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 3. Section 39-51-301, MCA, is amended to read:

“39-51-301. Administration — duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports,

make investigations, and take action ~~as~~ *that* it 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 will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

~~(5) The department may delegate to the department of revenue all duties associated with the administration of unemployment insurance contributions and the employment security account. The duties must be carried out in conformity with the requirements of the program budget plan with the United States department of labor. The department of revenue must receive funds from the department for the performance of the delegated duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.~~

~~(6) The department may revoke its delegation to the department of revenue at any time.~~

~~(7)~~(5) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department *of revenue* for recruitment purposes for 1 year from the date of the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions*.

~~(8)~~(6) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(9)~~(7) (a) The termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the

termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions.*

~~(10)~~(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties ~~in subsection (5)~~ *associated with unemployment insurance contribution functions* remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and, ~~subject to the provisions of subsection (5)~~, succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection ~~(10)~~ do not apply to the program budget plan agreement between the department and the United States department of labor.”

Section 4. Section 39-51-302, MCA, is amended to read:

“39-51-302. Administrative rules. ~~(1)~~ The department may adopt procedural and substantive rules necessary to implement this chapter.

~~(2) The department shall delegate rulemaking authority to the department of revenue with respect to any function or duty delegated to the department of revenue pursuant to 39-51-301(5).”~~

Section 5. Section 39-51-409, MCA, is amended to read:

“39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) *Money deposited in the employment security account may be appropriated to the department for payment of:*

- (a) *unemployment insurance benefits;*
- (b) *expenses incurred in collecting money deposited in the account;*
- (c) *expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;*
- (d) *expenses incurred for the apprenticeship and training program;*
- (e) *expenses for displaced homemaker programs provided for under 39-7-305;*
- (f) *expenses for department research and analysis functions that provide employment, wage, and economic data; and*
- (g) *expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining.*

~~(2)~~(3) The department may transfer funds from the *employment security* account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide *for the* employment services programs *identified in subsection (2).*

~~(3)~~(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types.”

Section 6. Section 39-51-1110, MCA, is amended to read:

“39-51-1110. Refunds to employers. (1) If an employer claims an adjustment or the department ~~or its delegate, as provided in 39-51-301,~~ determines through an examination of the employer’s account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within ~~one~~ 1 year from the date the payment is made, whichever is later. The department ~~or its delegate pursuant to 39-51-301(5),~~ shall credit or refund the amount to the employer, without interest.

(2) If the department ~~or its delegate pursuant to 39-51-301(5),~~ determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year.”

Section 7. Section 39-51-1206, MCA, is amended to read:

“39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by ~~regulation rule~~ provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless ~~and until~~ the employer files a written request with the department for a redetermination or hearing on the classification and rate of contribution within 30 days after ~~receipt~~ *the mailing date* of the notice. *The department may extend the 30-day period for good cause.*

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error.”

Section 8. Section 39-51-1218, MCA, is amended to read:

“39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27

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6		0.87	1.07	1.27	1.47
7		1.07	1.27	1.47	1.67
8		1.27	1.47	1.67	1.87
9		1.47	1.67	1.87	2.07
10		1.67	1.87	2.07	2.27
Rate Class		Contribution Rates for Deficit Employers			
1		3.17%	3.37%	3.57%	3.77%
2		3.37	3.57	3.77	3.97
3		3.57	3.77	3.97	4.17
4		3.77	3.97	4.17	4.37
5		3.97	4.17	4.37	4.57
6		4.17	4.37	4.57	4.77
7		4.37	4.57	4.77	4.97
8		4.57	4.77	4.97	5.17
9		4.77	4.97	5.17	5.37
10		6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V (.0135)	Sched. VI (.0095)	Sched. VII (.00575) (.0075)	Sched. VIII (.0050)	Sched. IX (...)	Sched. X (...)
2.17	2.37	2.57	2.77	2.97	3.17
Contribution Rates for Eligible Employers					
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77

4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37

Section 9. Section 39-51-1219, MCA, is amended to read:

“39-51-1219. Procedures for the substitution, merger, transfer, or acquisition of an employer account by a successor employing unit — prohibitions and penalties — definitions. (1) ~~(a) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) If an employer~~ in any manner succeeds to or acquires all or ~~substantially all a portion of the trade or business of an another employer or transfers all or a portion of the employer’s trade or business to another employer and both employers are under substantially common ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer. who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:~~

~~(a) (b) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor’s liability and rate of contribution; and In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.~~

~~(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.~~

~~(b)(d) any~~ Any successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

~~(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was mailed, the successor employer’s right to appeal the transfer is waived.~~

(2) (a) ~~Whenever any individual or organization (whether or not a covered employer) in any manner~~ If an employer transfers, succeeds to, or acquires all or a portion ~~part~~ of the trade or business of ~~an a covered employer who at the time of acquisition was a covered employer and whenever that~~ and the employers are not under substantially common ownership, management, or control, the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer

to the successor employer if that portion of the trade or business is continued by the successor employer.:

~~(a) (b) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately preceding the date of transfer, must, upon the In order to make the transfer, a joint application for the transfer of the experience rating record must be made by of the predecessor employer and the successor employer within 90 days after of the acquisition and approval by the department., be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and~~

~~(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.~~

~~(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.~~

~~(b)(e) any~~ A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

~~(2) (a)(f)~~ The 90-day period for filing the joint application may be extended at the discretion of the department.

~~(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.~~

~~(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.~~

~~(4)~~(3) (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the predecessor's predecessor employer's trade or business and if:

(i) the employers are not under substantially common ownership, management, or control at the time of acquisition, the successor's successor employer's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or

(ii) the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the predecessor's predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the successor's successor employer's rate is the rate applicable assigned to the predecessor employer with respect to the period immediately preceding as of the date of acquisition, but if. If there was more than one predecessor employer, the successor's successor employer's rate must be a newly computed rate based on the combined experience of the predecessors predecessor employers and becomes, becoming effective immediately after the date of acquisition and remaining remains in effect for the balance of the rate year.

(4) The transfer of all or part of an employer's workforce to another employer must be considered a transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.

(5) (a) The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:

(i) the person is not otherwise an employer at the time of the acquisition; and

(ii) the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.

(6) Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

(a) the cost of acquisition;

(b) whether the person continued the trade or business operation;

(c) the length of time that the trade or business operation was continued after acquisition; and

(d) whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.

(7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:

(a) *If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).*

(b) *If the person is not an employer, the person is subject to a civil penalty of not more than \$5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).*

(c) *In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:*

(i) *is subject to any other penalties prescribed by this chapter;*

(ii) *may be subject to a criminal penalty pursuant to 39-51-3204; and*

(iii) *may be charged with any other applicable criminal violations provided by law.*

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

(a) *"Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.*

(b) *"Person" includes an individual, trust, estate, partnership, association, company, or corporation.*

(c) *"Trade or business" includes an employer's workforce.*

(9) *The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.*

(10) *This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor."*

Section 10. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by ~~15-30-209~~ in subsection (2).

(2) *The department may assess penalties and interest under this section as follows:*

(a) *a penalty of \$25 for the failure to file reports or make payments in a timely manner;*

(b) *in addition to the late penalty provided in subsection (2)(a), a penalty of \$50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;*

(c) *in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of \$100 for failure to comply with a subpoena; and*

(d) *interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.*

(3) *The department may waive all or any portion of any penalties and interest assessed pursuant to subsection (2).*

~~(2)~~(4) *There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in*

that account. Money deposited in that account and appropriated to the department ~~or transferred by the department to its delegate, pursuant to 39-51-301(5)~~, may only be used by the department ~~or its delegate~~ only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

~~(3)~~(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.”

Section 11. Section 39-51-1303, MCA, is amended to read:

“39-51-1303. Collection of unpaid taxes. (1) The department, ~~or its delegate pursuant to 39-51-301(5), has authority to~~ may enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and ~~adhered to~~ followed. Failure to meet the terms of the payment agreement voids the penalty and interest abatement, and *the* penalty and interest must be recomputed from the due date of the unpaid tax.

(2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, ~~or its delegate pursuant to 39-51-301(5)~~, may initiate a civil action in the name of the state to collect the amount due, and the employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged in default shall pay the costs of the action.

(3) An action for the collection of taxes due must be brought within 5 years from the date the original or amended report was filed or *the* assessment became due, whichever is later, or ~~it~~ *the action* is barred.

(4) The department, ~~or its delegate pursuant to 39-51-301(5)~~, may pursue its remedy under 39-51-1304; or this section, or both.”

Section 12. Section 39-51-2102, MCA, is amended to read:

“39-51-2102. Week Commencement of week of unemployment — ~~when deemed to commence.~~ An individual’s week of unemployment ~~shall be deemed to commence~~ *commences* only after ~~his registration at an unemployment office~~ *the individual files a claim for unemployment insurance benefits with the unemployment insurance division and has registered for work with the individual’s local job service*, except as the department may by ~~regulation~~ *rule* otherwise prescribe.”

Section 13. Section 39-51-2104, MCA, is amended to read:

“39-51-2104. General benefit eligibility conditions. (1) An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual’s benefit year only if the department finds that the individual:

(a) has filed a claim ~~at~~ and has ~~continued to report at an employment office~~ *filed continued claims* in accordance with rules that the department may

prescribe, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;

(b) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of:

(i) an illness or disability that occurs after the claimant has ~~registered for work~~ *filed or reopened a claim for unemployment insurance benefits* and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

(ii) enrollment as a student as provided in 39-51-2307.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 14. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine ~~the~~ *a claim for benefits*, and, on the basis of the *deputy's findings of fact* ~~facts the deputy has found~~, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy ~~will~~ *shall* determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated with the~~

~~administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.~~

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

~~(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.~~

~~(4)~~(3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

~~(5)~~(4) Except as provided in subsection ~~(6)~~ (5), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

~~(6)~~(5) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 15. Coordination instruction. If both House Bill No. 760 and [this act] are passed and approved, then [section 118] of House Bill No. 760, amending 39-51-1301, is void.

Section 16. Effective dates. (1) [Sections 1 through 8, sections 10 through 15, and this section] are effective on passage and approval.

(2) [Section 9] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 467

[HB 182]

AN ACT GENERALLY REVISING AND CONSOLIDATING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; DISTINGUISHING BETWEEN DEPARTMENT AND BOARD OR PROGRAM DUTIES REGARDING LICENSURE, EXAMINATION, AND FEES; CLARIFYING THE DETERMINATION AND DISTRIBUTION OF FEES FOR LICENSURE, EXAMINATION, AND ADMINISTRATIVE COSTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO HANDLE CERTAIN TASKS RELATED TO BOARDS, INCLUDING MONITORING OF LICENSING BOARDS' CASH BALANCES AND HIRING SERVICES FOR BOARDS; ALLOWING FOR FEE ADJUSTMENTS; REQUIRING STANDARDIZATION OF FORMS; INCLUDING DEPARTMENT PROGRAMS UNDER CERTAIN PROVISIONS APPLICABLE TO BOARDS; SETTING UNIFORM STANDARDS FOR LICENSE RENEWALS, INCLUDING RENEWAL PERIODS; REVISING CERTAIN NOTIFICATION PERIODS; REMOVING

SPECIFIC BOARD OR PROGRAM REFERENCES IF DUTIES ARE ASSIGNED TO THE DEPARTMENT OR PROVIDED GENERALLY TO ALL BOARDS; REMOVING THE REQUIREMENT TO PUBLISH AN ANNUAL LIST OF SOCIAL WORKERS AND PROFESSIONAL COUNSELORS; REMOVING CERTAIN SPECIFIED LICENSING PERIODS; REMOVING THE PUBLICATION REQUIREMENT FOR OUTFITTERS' NAMES AND ADDRESSES; REPEALING CERTAIN BOARD-SPECIFIC OR PROGRAM-SPECIFIC REFERENCES TO LICENSURE, EXAMINATIONS, AND FEES; AMENDING SECTIONS 23-3-501, 23-4-105, 23-4-201, 27-12-206, 33-30-1013, 37-1-101, 37-1-104, 37-1-105, 37-1-121, 37-1-130, 37-1-131, 37-1-134, 37-1-141, 37-1-302, 37-1-306, 37-1-307, 37-2-101, 37-3-203, 37-3-211, 37-3-301, 37-3-305, 37-3-306, 37-3-307, 37-3-309, 37-3-311, 37-3-313, 37-3-341, 37-3-342, 37-3-343, 37-3-344, 37-3-347, 37-4-301, 37-4-307, 37-4-402, 37-4-406, 37-6-304, 37-7-104, 37-7-302, 37-7-321, 37-7-605, 37-7-606, 37-8-102, 37-8-202, 37-8-204, 37-9-304, 37-9-305, 37-10-302, 37-10-304, 37-11-201, 37-11-304, 37-12-201, 37-12-302, 37-13-302, 37-14-306, 37-16-202, 37-16-405, 37-17-302, 37-18-202, 37-19-401, 37-19-702, 37-19-807, 37-20-301, 37-20-302, 37-22-201, 37-22-301, 37-22-302, 37-23-101, 37-23-202, 37-23-203, 37-23-206, 37-24-202, 37-24-303, 37-24-310, 37-25-201, 37-26-201, 37-26-403, 37-27-105, 37-27-210, 37-28-104, 37-28-202, 37-29-306, 37-31-203, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-323, 37-34-201, 37-34-305, 37-35-103, 37-40-302, 37-42-304, 37-42-308, 37-47-101, 37-47-201, 37-47-304, 37-50-304, 37-51-204, 37-51-303, 37-51-305, 37-51-603, 37-53-104, 37-60-304, 37-66-304, 37-67-303, 37-67-321, 37-68-201, 37-68-304, 37-68-305, 37-68-307, 37-68-310, 37-68-312, 37-69-304, 37-69-305, 37-69-306, 37-69-401, 37-72-102, 37-72-202, 37-72-305, 37-76-109, 50-16-201, 50-74-312, AND 80-8-207, MCA; REPEALING SECTIONS 37-3-346, 37-4-203, 37-4-303, 37-4-403, 37-6-303, 37-7-303, 37-8-431, 37-10-307, 37-11-305, 37-11-308, 37-11-309, 37-12-307, 37-13-306, 37-13-307, 37-14-303, 37-14-309, 37-14-310, 37-15-304, 37-15-306, 37-15-308, 37-15-312, 37-16-403, 37-16-404, 37-16-407, 37-17-303, 37-17-305, 37-17-306, 37-17-307, 37-17-308, 37-18-203, 37-18-303, 37-18-307, 37-19-306, 37-22-303, 37-22-304, 37-23-103, 37-23-205, 37-24-304, 37-24-308, 37-25-307, 37-28-203, 37-29-304, 37-29-305, 37-31-321, 37-31-322, 37-35-203, 37-40-304, 37-40-305, 37-47-312, 37-50-308, 37-50-317, 37-51-310, 37-53-103, 37-54-210, 37-54-211, 37-54-311, 37-60-312, 37-65-304, 37-65-306, 37-66-307, 37-67-315, 37-67-316, 37-67-318, 37-69-307, 37-72-303, 37-72-306, 50-39-105, 50-39-106, 50-74-309, 50-74-313, AND 50-76-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 23-3-501, MCA, is amended to read:

“23-3-501. Licenses — fees. (1) The board may issue a license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

(4) Each application for a license under this section must be accompanied by a fee, ~~commensurate with costs for that license,~~ as provided in 37-1-134, as set by the board.”

Section 2. Section 23-4-105, MCA, is amended to read:

“23-4-105. Authority of board. The board shall, ~~subject to 37-1-101 and 37-1-121,~~ license and regulate racing and review race meets held in this state under this chapter. All percentages withheld from amounts wagered must be deposited in the board’s agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently engaged in Montana, ~~it~~ *the board* shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board ~~should~~ *shall* consider both the economic and safety impacts on the existing racing and breeding industry.”

Section 3. Section 23-4-201, MCA, is amended to read:

“23-4-201. Licenses. (1) ~~It is unlawful for a~~ *A person to may not* hold a race meet, including simulcast race meets under the parimutuel system, in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall *file with the department* an application ~~with the department which shall~~ *that must* set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet ~~shall~~ *must* be licensed and charged an annual fee set by the board, ~~which shall~~. *The annual fee must* be paid to the department and used for expenses of administering this chapter, ~~subject to 37-1-101(6).~~ Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) ~~Applications~~ *An application* to hold a race ~~meets shall~~ *meet must* be submitted to the department, and the board shall act on the ~~applications~~ *application* within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race ~~meets~~ *meet comply with* the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may apply for a license to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.”

Section 4. Section 27-12-206, MCA, is amended to read:

“27-12-206. Funding. (1) There is a pretrial review fund to be administered by the director for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director. The fund may not become part of or revert to the general fund of this state but is subject to auditing by the legislative auditor. Money from the assessments levied under this section must be deposited in the fund.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year that is not required for the administration of this chapter must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date that the chiropractic physician's annual renewal fee under ~~37-12-307~~ 37-1-134 is due. An unpaid assessment bears a late charge fee of \$25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of labor and industry has under ~~37-12-307~~ 37-1-134 with regard to a chiropractic physician's annual license fee. However, nothing in this section may be interpreted to conflict with 37-1-138."

Section 5. Section 33-30-1013, MCA, is amended to read:

"33-30-1013. Coverage required for services provided by nurse specialists. A health service corporation shall provide, in group and individual insurance contracts, coverage for health services provided by a nurse specialist, as specifically listed in 37-8-202~~(5)~~, if health care services that nurse specialists are licensed to perform are covered by the contract."

Section 6. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry ~~may~~ shall:

(1) ~~establish and~~ provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, ~~taking receiving and processing routine applications for licenses as defined by a board, issuing and denying licenses granted by the boards, renewing routine licenses as defined by a board, disciplining licensees, registering, setting administrative fees, preparing agendas and meeting notices, conducting mailings,~~ taking minutes of board meetings and hearings, and filing;

(2) standardize *policies and procedures* and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for ~~the~~ all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) ~~contract for or~~ administer and grade examinations required by each board ~~or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;~~

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards *and programs* on an equitable basis as determined by the department;

(7) adopt rules setting *administrative fees and* expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's licensing board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) *provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;*

(10) *monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and*

(11) *establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided."*

Section 7. Section 37-1-104, MCA, is amended to read:

"37-1-104. Standardized forms. ~~It is the responsibility of the~~ *The* department ~~whenever possible to shall~~ adopt standardized application, license, and other forms ~~to be used by the boards and department programs within the department.~~ *to be used by the boards and department programs within the department.* The standardization is to *streamline processes, expedite services, reduce costs, and waste, and the use of out-of-date forms and facilitate automated printing and computerization.*"

Section 8. Section 37-1-105, MCA, is amended to read:

"37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards ~~and department programs within the department~~ require all applicants ~~each applicant~~ *each applicant* for licensure or renewal to report any legal or disciplinary ~~actions~~ *action* against ~~them the applicant~~ *the applicant* that ~~relate~~ *relates* to the propriety of the applicants' ~~applicant's~~ *applicant's* practice of or ~~their~~ *the applicant's* fitness to practice the profession or occupation for which ~~they seek~~ *the applicant seeks* licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license."

Section 9. Section 37-1-121, MCA, is amended to read:

"37-1-121. Duties of commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings ~~before each board within the department~~ whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) *establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.*

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner."

Section 10. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definition. As used in this part, ~~"board" means each board in this title~~ *"board" means each board in this title* the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is ~~located~~ administratively attached to the department of labor and industry as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

Section 11. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. ~~Each~~ A quorum of each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within ~~its~~ the board's jurisdiction;

(2) 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 ~~its~~ the board's jurisdiction. The hearings must be conducted by a ~~hearing~~ *hearings* examiner when required under 37-1-121~~(4)~~.

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), 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 or 72;

(4) pay to the department ~~its~~ the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(5) 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.

(6) 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.

(7) *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. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.*

(8) *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."*

Section 12. Section 37-1-134, MCA, is amended to read:

~~"37-1-134. Licensing boards to establish fees~~ Fees commensurate with costs. ~~All Each licensing boards board~~ allocated to the department shall set board fees ~~reasonably~~ related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, ~~each board within~~ the department may establish standardized fees, including but not limited to fees for ~~program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education~~ administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. ~~Board~~ Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the ~~board~~ department. Each board and department program shall maintain records sufficient to support the fees charged for each program area."

Section 13. Section 37-1-141, MCA, is amended to read:

~~"37-1-141. Nonrenewal of license for three years~~ License renewal — lapse — expiration — termination. (1) *The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.*

(2) *To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.*

(3) *A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.*

(4) *A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.*

(5) *To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:*

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) *(a) A licensee who practices with a lapsed license is not considered to be practicing without a license.*

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) *The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.*

(8) *Unless otherwise provided by statute or rule, a lapsed an occupational or professional license that is not renewed within 3 2 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated reactivated, and a new original license must be obtained by passing a qualifying examination and paying the appropriate fee.*

(9) *The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.*

(10) This section may not be interpreted to conflict with 37-1-138."

Section 14. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

- (b) the status of compliance with a stipulation or order of the board;
- (c) whether a license should be granted, denied, or conditionally issued; or
- (d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, ~~regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission.~~

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 15. Section 37-1-306, MCA, is amended to read:

"37-1-306. Continuing education. A board *or, for programs without a board, the department* may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education."

Section 16. 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, ~~issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e); and must be~~ signed by the ~~presiding officer~~ *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) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.~~

~~(e)~~(d) establish a screening panel ~~that determines~~ *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 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.

~~(f)~~(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 regarding ~~its~~ *the board's* licensees and license applicants and regarding possible unlicensed practice.

[(3) 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 17. Section 37-2-101, MCA, is amended to read:

“37-2-101. Definitions. As used in this part, the following definitions apply:

(1) “Community pharmacy”, when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) “Device” means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) “Drug” has the same meaning as provided in 37-7-101.

(4) “Drug company” means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; ~~but the~~. *The* term does not include a pharmacy.

(5) “Medical practitioner” means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202~~(5)~~ and in the licensed practice to administer or prescribe drugs.

(6) “Person” means any individual and any partnership, firm, corporation, association, or other business entity.

(7) “Pharmacy” has the same meaning as provided in 37-7-101.

(8) “State” means the state of Montana or any political subdivision of the state.”

Section 18. Section 37-3-203, MCA, is amended to read:

“37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) 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;

(4) 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;

~~(5) select an executive secretary to be hired by the department to:~~

~~(a) provide services to the board in connection with the board’s duties under this chapter;~~

~~(b) assist in prosecution and matters of license discipline under this chapter;~~
and

~~(c) administer the board’s affairs; and~~

~~(6)~~(5) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.”

Section 19. Section 37-3-211, MCA, is amended to read:

“37-3-211. Executive secretary. To perform the services provided for in ~~37-3-203(5)~~ to the board in connection with the board’s duties under this chapter, assist in prosecution and matters of license discipline, and administer the board’s affairs, the department shall hire an executive secretary selected by the board.”

Section 20. Section 37-3-301, MCA, is amended to read:

“37-3-301. License required — kinds of certificates. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue four forms of certificates of licensure under the board’s seal; *which include* the physician’s certificate, the restricted certificate, the temporary certificate, and the telemedicine certificate issued in accordance with 37-3-341 through ~~37-3-345 and 37-3-347 through~~ 37-3-349. The physician’s certificate and the restricted certificate must be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates must be designated as:

(a) a physician’s certificate, which is subject to renewable registration in accordance with department rules;

(b) a restricted certificate;

(c) a temporary certificate, which is subject to specifications and limitations imposed by the board; and

(d) a telemedicine certificate.”

Section 21. Section 37-3-305, MCA, is amended to read:

“37-3-305. Qualifications for licensure. (1) Except as provided in subsections (4) and (5), a person may not be granted a physician’s license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program;

(d) has ~~had submitted~~ a completed application ~~file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board;~~ and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

- (a) is of good moral character, as determined by the board;
 - (b) is a graduate of an approved medical school as defined in 37-3-102;
 - (c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program; and
 - (d) is able, in the opinion of the board, to communicate in the English language.
- (4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:
- (a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;
 - (b) is a resident in good standing with the Montana family practice residency program; and
 - (c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.
- (5) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:
- (a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;
 - (b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;
 - (c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;
 - (d) makes application to the department on a *an approved* form ~~prescribed by the board~~; and
 - (e) pays a fee set by the board, as provided in 37-3-308."

Section 22. Section 37-3-306, MCA, is amended to read:

"37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

- (a) passing an *approved* examination ~~given and graded by the department~~, subject to 37-1-101;
- (b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ *that* has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or
- (c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws

of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) ~~No~~ An applicant who applies for a license on the basis of an examination and fails the examination may *not* be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before ~~will~~ *may* be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 ~~will~~ *must* be certified in the same manner as provided ~~above~~ *in this section* for physicians.”

Section 23. Section 37-3-307, MCA, is amended to read:

“37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination ~~given and graded by the department, subject to 37-1-101~~ *prescribed by the board;*

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of osteopathic medical examiners or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ *that* has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or ~~its~~ *the* equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary certificate may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary certificate subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary certificate to a person who has committed unprofessional conduct. The issuance of a temporary certificate does not impose any future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary certificate. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.”

Section 24. Section 37-3-309, MCA, is amended to read:

“37-3-309. Application for license. (1) A person desiring a license to practice medicine shall ~~make application~~ *apply* to the department, ~~verified by oath and in a form prescribed by the board on an approved form.~~ The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the release of records and information pertinent to the department’s inquiry.

~~(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a certificate until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter.”~~

Section 25. Section 37-3-311, MCA, is amended to read:

“37-3-311. Examination. (1) ~~Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant’s professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by both the name of the applicant and a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.~~

~~(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.~~

~~(3)(1)~~ An applicant who is a graduate of a foreign medical school ~~shall~~ *is required* to have passed an examination given by the education council for foreign medical graduates or its successor.

~~(4)(2)~~ The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for ~~this~~ *the examination*.

~~(5)(3)~~ The board may use other Montana physicians to assist in preparing the examination.

~~(6)(4)~~ A person may not be granted a license to practice medicine if ~~he~~ *the person* fails to attain a passing grade as set by the board. If an applicant fails to meet the minimum grade requirements ~~in his~~ *on the* first examination, ~~he~~ *the applicant* may be reexamined not more than two additional times on each of the component parts of the examination. ~~An examination fee shall be charged for each additional examination.~~ If an applicant is prevented through no fault of ~~his own~~ *the applicant's* from taking a scheduled examination, ~~he~~ *the applicant* may, within 2 years, be examined without submitting a new application."

Section 26. Section 37-3-313, MCA, is amended to read:

~~"37-3-313. Renewal fees — failure to pay — limiting~~ *Limiting authority to impose renewal fees.* (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state ~~shall pay to the department a renewal fee as prescribed by the board.~~

~~(2) The payments for renewal must be made prior to the expiration date of the license, as set forth in a department rule. The department shall mail renewal notices before the renewal is due.~~

~~(3) Except as provided in 37-1-138, in case of default in the payment of the renewal fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying license to practice medicine may be considered lapsed by the board.~~

~~(4) A license or renewal fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state."~~

Section 27. Section 37-3-341, MCA, is amended to read:

~~"37-3-341. Legislative findings.~~ The Montana legislature previously found, in 37-3-101, that the practice of medicine in Montana is a privilege, not a natural right, and that the regulation of the practice of medicine is necessary to ensure the health, happiness, safety, and welfare of the people of Montana. The legislature now finds that because of technological advances and changing patterns of medical practice, medicine is increasingly being practiced by electronic means across state lines. Although access to technological advances is in the public interest, the legislature also finds that regulation of the practice of medicine across state lines is necessary to protect the public against the unprofessional, improper, unauthorized, and unqualified practice of medicine. Accordingly, the legislature finds that physicians outside the boundaries of Montana who ~~enter the state~~ by electronic or other technological means ~~to~~ practice medicine for compensation on patients inside Montana are seeking the benefit and protection of the laws of Montana and are subject to the licensure

and regulatory requirements provided in 37-3-341 through *37-3-345 and 37-3-347 through 37-3-349.*"

Section 28. Section 37-3-342, MCA, is amended to read:

"37-3-342. Definition — scope of practice allowed by telemedicine certificate. (1) As used in 37-3-301, ~~and~~ 37-3-341 through *37-3-345, and 37-3-347 through 37-3-349,* "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

(a) The information or opinion is provided for compensation or with the expectation of compensation.

(b) The physician does not limit the physician's services to an occasional case.

(c) The physician has an established or regularly used connection with the state, including but not limited to:

(i) an office or another place for the reception of a transmission from the physician;

(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or

(iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in 37-3-301, ~~and~~ 37-3-341 through *37-3-345, and 37-3-347 through 37-3-349,* telemedicine does not mean:

(a) an act or practice that is exempt from licensure under 37-3-103;

(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;

(c) the transfer of patient records, independent of any other medical service and without compensation;

(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative;

(e) diagnosis of a medical condition by a physician located outside the state, based upon an x-ray, cardiogram, pap smear, or other specimen sent for evaluation to the physician outside the state by a health care provider in Montana; or

(f) a communication from a physician located outside Montana to a patient in Montana in collaboration with a physician or other health care provider licensed to practice medicine in Montana."

Section 29. Section 37-3-343, MCA, is amended to read:

"37-3-343. Practice of telemedicine prohibited without certificate — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine certificate issued pursuant to 37-3-301, ~~and~~ 37-3-341 through *37-3-345, and 37-3-347 through 37-3-349.*

(2) A telemedicine certificate authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine certificate pursuant to 37-3-345(2).

(3) A telemedicine certificate authorizes an out-of-state physician to practice only telemedicine. A telemedicine certificate does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A physician who practices telemedicine in this state without a telemedicine certificate issued pursuant to 37-3-301, ~~and 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349~~, in violation of the terms or conditions of that certificate, in violation of the scope of practice allowed by the certificate, or without a physician's certificate of licensure issued pursuant to 37-3-301(2)(a), is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

Section 30. Section 37-3-344, MCA, is amended to read:

"37-3-344. Application for telemedicine certificate. (1) A person desiring a telemedicine certificate shall apply to the department and verify the application by oath, in a form prescribed by the board.

(2) The application must be accompanied by:

(a) a certificate fee prescribed by board rule; and

(b) documents required by the board that establish that the applicant possesses the qualifications prescribed by 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the requisite qualifications.

(3) The application must include a clear statement that the applicant consents to the jurisdiction of the state as specified in 37-3-349.

(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board."

Section 31. Section 37-3-347, MCA, is amended to read:

"37-3-347. Reasons for denial of certificate — alternative route to licensed practice. (1) The board may deny an application for a telemedicine certificate if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a certificate required by 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board;

(b) fails to pay a required fee;

(c) does not possess the qualifications or character required by this chapter;
or

(d) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine certificate provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana."

Section 32. Section 37-4-301, MCA, is amended to read:

"37-4-301. Examination — qualifications ~~Qualifications — fees — certification.~~ (1) Applicants for licensure shall take and pass an examination

in order to be licensed. The examination must consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board, which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

~~(2) Acceptance by the board of a written and practical examination must be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. The examination must include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.~~

~~(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures.~~

~~(4) Applicants for licensure shall submit an application, which that must include, when required:~~

~~(a)(1) certification of successful completion of the national board written examination;~~

~~(b)(2) certification of successful completion of a regional board practical examination;~~

~~(c)(3) three affidavits of good moral character;~~

~~(d)(4) a certificate of graduation from a board-approved dental school; and~~

~~(e) an examination fee commensurate with costs and set by the board;~~

~~(f)(5) an application fee, commensurate with costs and set by the board;~~

~~(g) a recent photograph of the applicant; and~~

~~(h) copies of all other state licenses that are held by the applicant.~~

~~(5) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.~~

~~(6) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.~~

~~(7) The board is authorized to adopt necessary and reasonable rules governing application procedures."~~

Section 33. Section 37-4-307, MCA, is amended to read:

"37-4-307. Renewal fee — default Notice of name and address change — local fees prohibited. (1) Each licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

~~(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.~~

~~(3) (a) Except as provided in 37-1-138, in case of default in payment of the renewal fee by a licensee, the license must be forfeited by the licensee. The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified letter addressed to the last known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.~~

~~(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for forfeiture, the license may not be forfeited.~~

~~(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:~~

~~(i) renewal fees are paid for each renewal period that they were unpaid, plus a late penalty fee for each renewal period;~~

~~(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and~~

~~(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.~~

~~(4)(1) Each dentist shall give the board notice of any change in name, address, or status within 30 10 days of the change.~~

~~(5)(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter."~~

Section 34. Section 37-4-402, MCA, is amended to read:

"37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules ~~it considers proper~~ *adopted by the board* and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination must consist of a written part and a practical or clinical part. ~~The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.~~

(4) ~~The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing~~

~~service practical examination. The board is authorized to make rules governing examination procedures.~~

~~(5)(3) Applicants~~ *An applicant* for licensure shall submit an application, which *that* must include, when required:

(a) certification of successful completion of the national board ~~written~~ *written* examination;

(b) certification of successful completion of a regional board ~~practical~~ *practical* examination;

(c) two affidavits of good moral character;

(d) *a* certificate of graduation from a board-approved dental hygiene school; *and*

~~(e) an examination fee commensurate with costs and set by the board;~~

~~(f)(e)~~ an application fee, commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

~~(6) Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.~~

~~(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.~~

~~(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."~~

Section 35. Section 37-4-406, MCA, is amended to read:

"37-4-406. Renewal fee — default — forfeiture of license Notice of name and address change — local fees prohibited. (1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.

(3) Except as provided in 37-1-138, in case of default in payment of the renewal fee by any licensee, the licensee shall forfeit the license.

(a) The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified mail to the last known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) The payment of the renewal fee on or before the time set for forfeiture, with a reasonable late fee set by the board, excuses the default.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each period that they were unpaid, plus a late penalty for each period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in

which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

~~(4)~~(1) Each dental hygienist shall give the board notice of any change in name, address, or status within ~~30~~ 10 days of the change.

~~(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.~~

~~(6)~~(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter.”

Section 36. Section 37-6-304, MCA, is amended to read:

“37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter is designated as a “registered podiatrist’s license” or a “temporary podiatrist’s license”.

(2) Licenses ~~must be recorded by the~~ *The department shall record licenses* the same as other medical licenses.

~~(3) Licenses must be renewed on a date set by department rule.~~

~~(4) A license renewal fee set by the board must be paid on a date set by department rule.~~

~~(5) The department shall mail renewal notices prior to the renewal date.~~

~~(6) Except as provided in 37-1-138, if the renewal fee is not paid on or before the renewal date, the board may consider the license lapsed.”~~

Section 37. Section 37-7-104, MCA, is amended to read:

“37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall *must* be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of practical experience.”

Section 38. Section 37-7-302, MCA, is amended to read:

“37-7-302. Examination — qualifications — fees — reciprocity *Qualifications — display of license.* (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

~~(2) The fee for an examination must be set by the board at a figure commensurate with costs. The fee may in the discretion of the board be returned to applicants not taking the examination.~~

~~(3)~~(1) To be entitled to examination as a pharmacist, the applicant must be of good moral character and must have graduated and received the first professional undergraduate degree from the school of pharmacy of the

university of Montana-Missoula or ~~from~~ *have received* an accredited pharmacy degree ~~program~~ that has been approved by the board. However, an applicant may not receive a registered pharmacist's license until the applicant has complied with the internship requirements established by the board.

~~(4)~~(2) Each person licensed and registered under this chapter must receive from the department an appropriate ~~certificate~~ *license attesting the fact, which*. *The license* must be conspicuously displayed at all times in the place of business."

Section 39. Section 37-7-321, MCA, is amended to read:

"37-7-321. Certified pharmacy license — *display*. ~~(4)~~ The board shall provide for the original certification and renewal by the board of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board, ~~and~~ on application on a *prescribed* form ~~prescribed by the board~~, and on the payment of an original certification fee prescribed by the board, the board shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. ~~The renewal fee for a pharmacy must be set by the board. Any default in the payment of the renewal fee after the date the fee is due increases the renewal fee as prescribed by the board.~~ The license must be displayed in a conspicuous place in the pharmacy for which it is issued ~~and expires on the date set by board rule. It is unlawful for a A person to may not conduct operate~~ a pharmacy, use the word "pharmacy" to identify the business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

~~(2) The board may impose discipline or deny or refuse to renew a pharmacy license for reasons specified in and subject to conditions specified in Title 37, chapter 1."~~

Section 40. Section 37-7-605, MCA, is amended to read:

"37-7-605. Out-of-state wholesale drug distributor licensing requirements. (1) ~~It is unlawful for an~~ *An* out-of-state wholesale drug distributor ~~to may not~~ conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on a *an approved* form ~~furnished by the board~~.

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

(4) A person acting as principal or agent for an out-of-state wholesale drug distributor may not sell or distribute drugs in this state unless the distributor has obtained a license."

Section 41. Section 37-7-606, MCA, is amended to read:

"37-7-606. Issuance of licenses Licenses. The license for wholesale drug distributors is effective during the period specified by department rule. ~~An application for renewal of a license must be mailed to each licensee at least 30 days prior to the renewal date, and if the renewal application and the fee are not mailed by the renewal date, the license is void upon its expiration date."~~

Section 42. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1734.

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

(4) "Medication aide" means a person who *in an assisted living facility* uses standardized procedures in the administration of drugs, as defined in 37-7-101, ~~in an assisted living facility~~ that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. ~~Practical~~ *The practice of practical nursing practice* uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 43. 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 shall elect from among the ~~nine~~ members a president and a secretary. ~~The board shall;~~

(b) hold other meetings when necessary to transact its business. ~~The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.~~

~~(2) The board may make rules necessary to administer this chapter. The board shall;~~

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter. ~~It shall;~~

(d) provide for surveys of schools at times ~~it~~ *the board* considers necessary. ~~It shall;~~

(e) approve programs that meet the requirements of this chapter and of the board. ~~The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall;~~

(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. ~~It shall;~~

(g) cause the prosecution of persons violating this chapter ~~and~~. *The board* may incur necessary expenses for prosecutions.

~~(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.~~

(h) *adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.*

(i) *establish a program to assist licensed nurses who are found to be physically or mentally impaired by 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 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.*

~~(4)~~(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;

~~(5) (a) The board may~~

(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 ~~its~~ *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.

~~(b) The board shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.~~

~~(6) The board may~~

(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.

~~(7) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.~~

~~(8) The board may~~

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) *adopt rules necessary to administer this chapter; and*

~~(9)(f) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."~~

Section 44. Section 37-8-204, MCA, is amended to read:

"37-8-204. Executive director. (1) The department shall hire an executive director to provide services to the board in connection with the board's duties of:

~~(1)(a)~~ (a) prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

~~(2)(b)~~ (b) evaluating and approving courses for affiliation of student nurses; and

~~(3)(c)~~ (c) reviewing qualifications of applicants for licensure.

(2) *The department shall hire as the executive director an individual who:*

(a) *is a graduate of an approved school of nursing and who has at least a master's degree with postgraduate courses in nursing;*

(b) *is licensed as a registered professional nurse in Montana; and*

(c) *has experience in teaching or administration in an approved school of nursing and who has completed at least 3 years in the clinical practice of nursing."*

Section 45. Section 37-9-304, MCA, is amended to read:

“37-9-304. Fees. (1) Each person who applies for licensure, ~~whether by waiver, examination, or reciprocity,~~ shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. ~~A license expires on a date set by department rule and must be renewed upon timely payment of the license fee.~~

~~(3) The fee for issuing a duplicate license must be fixed by the board.”~~

Section 46. Section 37-9-305, MCA, is amended to read:

“37-9-305. Renewal of registration and license License — grounds for discipline. ~~Each holder of a nursing home administrator’s registration and license shall renew it by payment of the required fee for the next subsequent period prior to the expiration date of the currently valid registration and license, except as may be otherwise provided in 37-1-138. Renewals of registrations or licenses A license must be granted as a matter of course. However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in a manner or under circumstances that would constitute grounds for discipline, it may not issue the renewal accordance with this chapter, the board may find grounds for discipline.”~~

Section 47. Section 37-10-302, MCA, is amended to read:

“37-10-302. Examination — qualifications Qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. ~~If the applicant does not meet the requirements of the rules, the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations must be practical in character and designed to ascertain the applicant’s fitness to practice the profession of optometry and must be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.~~

(2) A person is not eligible to receive a certificate of registration unless that person is 18 years of age or older and of good moral character.

(3) A person is not eligible to receive a certificate of registration unless that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a certificate of registration shall file ~~an~~ *a completed application, in the manner prescribed by the board, on a form provided by the department* and pay a fee prescribed by the board.

~~(5) A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a certificate of registration signed by the members of the board.”~~

Section 48. Section 37-10-304, MCA, is amended to read:

“37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents ~~must~~ shall satisfactorily complete a course referred to in subsection (1)(a) and ~~must~~ shall pass an examination ~~as provided in subsection (1)(d).~~

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. ~~The course must also be approved by the board.~~

~~(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination.~~

(2) (a) Each person desiring to ~~commence~~ the practice of optometry shall:

(i) pass an examination, of the ~~international~~ association of *regulatory* boards of examiners ~~in of~~ optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. ~~The course and examination must also be approved by the board.~~

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

~~(c) The board shall:~~

~~(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and~~

~~(ii) issue a certificate to an applicant who passes the examination.”~~

Section 49. Section 37-11-201, MCA, is amended to read:

“37-11-201. General powers — rulemaking power — records. (1) The board may:

~~(a)(1) adopt rules to carry implement this chapter into effect;~~

~~(b) grant, suspend, and revoke licenses;~~

~~(c)(2) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and~~

~~(d)(3) take any other disciplinary action necessary to protect the public.~~

~~(2) The board shall:~~

~~(a) examine applicants for licenses at reasonable places and times determined by the board;~~

~~(b) review the qualifications of applicants who are approved for examination for licensure;~~

~~(c) conduct written or computerized examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate; and~~

~~(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants, subject to the provisions of 37-1-138.~~

~~(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.~~

~~(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.~~

~~(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."~~

Section 50. Section 37-11-304, MCA, is amended to read:

"37-11-304. Application for examination — fee. (1) A person who desires to be licensed as a physical therapist or a physical therapist assistant shall apply to the department ~~in writing~~, on a form furnished by the department. The person shall:

~~(a) provide evidence under oath, satisfactory to the board, of having the qualifications preliminary to the examination required by 37-11-303; and~~

~~(b) pay to the department at the time of filing the application a fee established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).~~

~~(2) Anyone failing to pass the required examination on the first attempt is entitled to take a second examination and, if the second examination is failed, to take a third examination. A person who fails the third examination is required to successfully complete additional education as required by the board before retaking the examination."~~

Section 51. Section 37-12-201, MCA, is amended to read:

"37-12-201. Organization of board — meetings — powers and duties. (1) The board shall:

~~(1) elect annually a president, vice president, and secretary-treasurer from its membership;~~

~~(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates.~~

~~(3) The board shall:~~

~~(a)(2) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;~~

~~(b) adopt a seal that must be affixed to licenses issued;~~

~~(c)(3) make a schedule of minimum educational requirements, which that are without prejudice, partiality, or discrimination; as to the different schools of chiropractic;~~

~~(d)(4) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and the display of license licenses, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors.~~

~~(e)(5) make determinations of the qualifications of applicants under this chapter; and~~

~~(f) administer the examination for licensure under this chapter;~~

~~(g) establish and collect fees, fines, and charges as provided in this chapter;~~

~~(h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and~~

~~(i)(6) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.~~

~~(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection."~~

Section 52. Section 37-12-302, MCA, is amended to read:

"37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall ~~make application apply~~ to the department; on the *a department* form and in the manner prescribed by the board. Each applicant must be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, ~~in which the applicant has attended a course of study of 4 school years of not less than 9 months each.~~ The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. Application must be made in writing, must be sworn to by an officer authorized to administer oaths, and must recite the history of applicant's educational qualifications, how long the applicant has studied chiropractic, of what school or college the applicant is a graduate, and the length of time the applicant has been engaged in practice. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board. ~~A fee must also be paid for a subsequent examination and application.~~

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement."

Section 53. Section 37-13-302, MCA, is amended to read:

“37-13-302. Application for licensure — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall ~~make application apply to the board for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board.~~ A fee prescribed by the board shall *must* accompany the application.

(2) ~~A person making application~~ *An applicant shall furnish to the board evidence that he the applicant is:*

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of ~~an approved~~ *a school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and*

(d) has passed an examination ~~prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists or its successor.”~~

Section 54. Section 37-14-306, MCA, is amended to read:

“37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing high-quality x-ray procedures without endangering public health and safety. An applicant ~~must be required to~~ *shall* demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination. Permits issued under provisions of this section and 37-14-305 ~~shall and this section must specify~~ x-ray procedures, defined and established by rule, that may be performed by the holder. Permits ~~shall be~~ *are* valid for a period not to exceed 12 months but may be renewed under the provisions established by rule.

~~(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any subsequent examination shall meet any additional eligibility requirements established by rule for reexamination.~~

~~(3)~~(2) *Applicants* *An applicant* meeting minimum requirements for licensure ~~shall~~ *must* be issued a temporary permit to work as a radiologic technologist. This temporary permit ~~shall expire~~ *expires* 15 days after the date of first opportunity for examination.

~~(4)~~(3) The board shall issue temporary permits to unlicensed persons to perform x-ray procedures when adequate evidence is provided to the board that ~~such a~~ *temporary* permit is necessary because of a regional hardship or emergency condition and that ~~such person~~ *the prospective recipient of a temporary permit* is capable of performing x-ray procedures without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board’s satisfaction, evidence of continued regional hardship or emergency conditions.

The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.

~~(5)~~(4) Each applicant for a permit must:

- (a) be of good moral character;
- (b) be at least 18 years of age; and
- (c) not be addicted to intemperate use of alcohol or narcotic drugs.”

Section 55. Section 37-16-202, MCA, is amended to read:

“37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

~~(3) suspend or revoke licenses under this chapter;~~

~~(4) designate the time and place for examining applicants for license and supervise and administer the examination;~~

~~(5)~~(3) adopt rules necessary to carry out this chapter;

~~(6)~~(4) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids;

~~(7) prepare examinations required by the chapter;~~

~~(8)~~(5) initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;

~~(9)~~(6) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, ~~37-16-403~~, 37-16-405, ~~37-16-407~~, 37-16-408, and 37-16-411. Rules adopted by the board may include but are not limited to rules defining the term “related devices” and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, ~~37-16-403~~, 37-16-405, ~~37-16-407~~, 37-16-408, and 37-16-411.

~~(10)~~(7) establish and adopt minimum requirements for the form of bills of sale and receipts.”

Section 56. Section 37-16-405, MCA, is amended to read:

“37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take ~~the a~~ practical examination ~~under 37-16-403~~ may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser’s license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) ~~(a)~~ If a person who holds a trainee license takes and fails to pass the practical examination during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. ~~In no event may more~~ *More* than one renewal ~~be~~ *is not* permitted.

~~(b) The fee for renewal must be set by the board commensurate with the cost of administering the license and related functions of the board.~~

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 57. Section 37-17-302, MCA, is amended to read:

~~"37-17-302. Application — qualifications~~ **Qualifications.** ~~(1) Application for examination for licensure as a psychologist must be made on forms prescribed by the board.~~

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence ~~by oath~~ that the person:

~~(a)~~(1) is 18 years of age or older;

~~(b)~~(2) is of good moral character;

~~(c)~~(3) (a) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

~~(d)~~(b) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has

successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii)(c) has received a doctoral degree in psychology from an accredited college or university and has completed a course of studies that meets minimum standards specified in rules by the board; and

(d)(4) has completed at the time of application a minimum of 2 years of supervised experience in the practice of psychology. One year of this experience must be postdoctoral but may not include more than 6 months of supervised research, teaching, or a combination of both.”

Section 58. Section 37-18-202, MCA, is amended to read:

~~“37-18-202. Powers of board and department — examinations~~
Rulemaking. (1) The board may adopt rules ~~and orders~~ necessary for the performance of its duties, including but not limited to:

(a) ~~prescribing of forms for application for examination and license;~~

(b) ~~preparation of examinations; and~~

(c) ~~clarifying the use of support personnel and the provision of emergency services.~~

(2) ~~The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses to carry out the purposes of this chapter.”~~

Section 59. Section 37-19-401, MCA, is amended to read:

~~“37-19-401. License required — display of license — renewal — penalty for late renewal.~~ (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

(2) ~~A mortuary license expires on the date set by department rule and may be renewed upon payment of a fee set by the board.~~

(3) ~~The board may set a penalty for late renewal of a mortuary license.”~~

Section 60. Section 37-19-702, MCA, is amended to read:

~~“37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal.~~ (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, ~~beginning July 1, 1993.~~ The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on the date set by department rule and may be renewed upon payment of a fee set by the board, ~~which includes.~~ *The fee must include* the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) ~~The board may set a penalty fee for late renewal of a license.~~

(4)(3) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

~~(5)~~(4) Crematory operator and crematory technician licenses expire on the date set by department rule and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.”

Section 61. Section 37-19-807, MCA, is amended to read:

“37-19-807. Powers and duties of board. The board is charged with administering this part. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board.

(2) issue or amend permits to operate a cemetery in accordance with the provisions of this part;

(3) adopt rules ~~and forms~~ to enforce the provisions of this part;

(4) require a cemetery company to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for ~~the a period of time that~~ the board may by rule prescribe; and

(5) require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in this part, including but not limited to contributions not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.”

Section 62. Section 37-20-301, MCA, is amended to read:

“37-20-301. Utilization plan required — contents — approval. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) is licensed by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;

(b) the nature and location of the physician’s medical practice;

(c) the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if ~~it~~ *the board* finds that the practice of the physician assistant-certified is:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(4) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member."

Section 63. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval and fee—renewal of license—renewal fee. (1) A utilization plan *must be submitted for approval, and a fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.*

~~(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.~~

~~(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.~~

~~(4) A license renewal fee set by the board must be paid at the time the license is renewed.~~

~~(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.~~

~~(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed.~~

~~(7) Fees received by the department of labor and industry must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."~~

Section 64. Section 37-22-201, MCA, is amended to read:

"37-22-201. Duties of board. The board shall:

~~(1) subject to 37-1-101, examine qualified applicants, issue licenses to qualified applicants that meet the requirements of this chapter, and renew licenses under the provisions of this chapter;~~

~~(2)(1) shall recommend prosecutions for violations of 37-22-411 and 37-23-311 to the attorney general or the appropriate county attorney, or both;~~

~~(3) annually publish a list of the names and addresses of all persons who are licensed social workers;~~

~~(4) establish requirements for continuing education that are a condition of license renewal;~~

~~(5)(2) shall meet at least once every 3 months to perform the duties described in Title 37, chapters 1, 22, and 23 this section.~~ The board may, once a year by a consensus of ~~its~~ board members, determine that there is no necessity for a board meeting.

~~(6) distribute a copy of the ethical standards to the certified masters of social work; and~~

~~(7)(3) shall adopt rules that set professional, practice, and ethical standards for licensed masters of social work workers and professional counselors and such other rules as may be reasonably necessary for the administration of chapter 23 and this chapter; and~~

(4) may adopt rules governing the issuance of licenses of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a license is issued."

Section 65. Section 37-22-301, MCA, is amended to read:

"37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination ~~prepared and administered prescribed by the board.~~

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact, within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

~~(3) An applicant who submits an application for licensure before October 1, 1994, may acquire the supervised experience required by subsection (2)(b) in less than 24 months.~~

~~(4)(3) An applicant who has failed fails the examination may reapply to take the examination.~~

~~(5)(4) An applicant is exempt from the examination requirement if the applicant satisfies the board that the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that the applicant has passed an examination similar to that required by the board."~~

Section 66. Section 37-22-302, MCA, is amended to read:

"37-22-302. Fees. (1) Each applicant for a license shall, upon submitting ~~his~~ an application to the board, pay an application fee set by the board. ~~equal to the cost of processing the application.~~

~~(2) Each applicant for a license required to take an examination shall, prior to commencement of the examination, pay an examination fee set by the board equal to the cost of administering the examination.~~

~~(3) Each applicant shall, prior to receipt of a license or license renewal, pay a fee set by the board equal to the cost of issuing a license.~~

~~(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board."~~

Section 67. Section 37-23-101, MCA, is amended to read:

"37-23-101. Purpose. The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring ethical, qualified, and professional practice of professional counseling. This chapter and the rules promulgated *by the board* under ~~37-23-103~~ 37-22-201 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors."

Section 68. Section 37-23-202, MCA, is amended to read:

"37-23-202. Licensure requirements. (1) An applicant for licensure must have satisfactorily ~~completed~~:

(a) *completed* a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum, ~~which that~~ resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) *completed* 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) ~~and~~ passed an examination prepared and administered by:

~~(i) the board, based on a national examination approved by the board;~~

~~(ii)(i) the national board of certified counselors; or~~

~~(iii)(ii) the national academy of certified clinical mental health counselors;~~
and

(d) *completed* an application ~~form and process prescribed by the board.~~

(2) The board shall provide by rule for licensure of a person who possesses a ~~graduate degree that consists of a minimum of 45 semester hour graduate degree that is~~ *hours* primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years."

Section 69. Section 37-23-203, MCA, is amended to read:

"37-23-203. Issuance, effective date, and display *Display of license.*

(1) If an applicant meets the requirements contained in 37-23-202 and has paid the appropriate fees, the board shall issue a license to the applicant attesting to

~~the date and fact of licensure. The license is effective on the date of issuance and must be renewed as provided in 37-23-205.~~

~~(2) The license received pursuant to 37-23-202 must be displayed in the registrant's place of business or employment."~~

Section 70. Section 37-23-206, MCA, is amended to read:

"37-23-206. Fees. ~~(1) Each applicant for a license shall, upon submitting his an application to the board, pay an application fee set by the board, commensurate with costs.~~

~~(2) Each applicant for a license required to take an examination shall, before commencement of the examination, pay an examination fee set by the board commensurate with costs.~~

~~(3) Each applicant shall, before receipt of a license or license renewal, pay a fee set by the board commensurate with costs.~~

~~(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board."~~

Section 71. Section 37-24-202, MCA, is amended to read:

"37-24-202. Powers and duties of board. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

~~(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of applicants;~~

~~(e)(b) adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter; and~~

~~(d) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and~~

~~(e)(c) adopt a seal by which the board shall authenticate its board proceedings.~~

(2) A copy of the proceedings, records, or acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, is prima facie evidence of the validity of the document.

~~(3) The department may employ persons it considers necessary to carry out the provisions of this chapter."~~

Section 72. Section 37-24-303, MCA, is amended to read:

"37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where the person completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the national board for certification in occupational therapy, inc. (NBCOT); and

(d) pass an examination as provided for in 37-24-304 prescribed by the board.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.”

Section 73. Section 37-24-310, MCA, is amended to read:

“37-24-310. Fees. ~~(1)~~ The board may adopt fees in accordance with 37-1-134 for:

- ~~(a)~~(1) applications for licensure;
- ~~(b)~~ examination;
- ~~(c)~~(2) initial license issuance; *and*
- ~~(d)~~ license renewal;
- ~~(e)~~ late license renewal; *and*
- ~~(f)~~(3) limited permit issuance.

~~(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(G).”~~

Section 74. Section 37-25-201, MCA, is amended to read:

“37-25-201. Powers and duties of the board. In addition to all other powers and duties conferred and imposed on the board by *Title 37, chapter 1, and this chapter*, the board shall:

- ~~(1) examine qualified applicants for a license to practice dietetics-nutrition, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as provided in 37-25-307; and~~
- ~~(2) adopt rules that set professional, practice, and ethical standards for licensed nutritionists and such other rules as may be necessary for the administration of this chapter.”~~

Section 75. Section 37-26-201, MCA, is amended to read:

“37-26-201. Powers and duties of board. The board shall:

- (1) adopt rules necessary or proper to administer and enforce this chapter;
- (2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;
- ~~(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;~~
- ~~(4)~~(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;
- ~~(5)~~(4) adopt rules that set nonrefundable fees, commensurate with costs, for application, examination, *and* licensure, *and* other administrative services;
- ~~(6)~~(5) approve naturopathic medical colleges as defined in 37-26-103;
- ~~(7)~~(6) issue certificates of specialty practice;
- ~~(8)~~(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301;

~~(9)~~(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301; and

~~(10)~~(9) adopt rules to implement the provisions in 37-1-138.”

Section 76. Section 37-26-403, MCA, is amended to read:

“37-26-403. Application for licensure — examination — temporary license. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department in the manner and form prescribed by the board. The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial. At the board’s request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department’s investigation.

(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. ~~The application for examination must be accompanied by the examination fee.~~ If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.”

Section 77. Section 37-27-105, MCA, is amended to read:

“37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in *Title 37, chapter 1, and this section*; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board’s duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules may include but are not limited to:

~~(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;~~

~~(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;~~

~~(c)~~(a) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

~~(d)~~(b) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

~~(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses consistent with the provisions in 37-1-138;~~

- ~~(f) the adoption of disciplinary standards for licensees;~~
- ~~(g)(c) the development of standardized informed consent and reporting forms;~~
- ~~(h)(d) the adoption of ethical standards for licensed direct-entry midwives;~~
- ~~(i)(e) the adoption of supporting documentation requirements for primary birth attendants; and~~
- ~~(j)(f) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201.”~~

Section 78. Section 37-27-210, MCA, is amended to read:

“37-27-210. Fees. (1) An applicant for a direct-entry midwife license shall, upon submitting an application to the board, pay an application fee set by the board, ~~commensurate with costs.~~

~~(2) An applicant required to take an examination shall, before commencement of the examination, pay an examination fee set by the board, commensurate with costs.~~

~~(3)(2) Before a license may be issued or renewed, an applicant shall pay a fee set by the board, commensurate with costs.~~

~~(4) Subject to 37-1-101(G), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.~~

~~(5)(3) Fees are nonrefundable.”~~

Section 79. Section 37-28-104, MCA, is amended to read:

“37-28-104. Board powers and duties. (1) The board shall:

~~(a) examine, license, grant temporary permits, and renew the licenses or permits of duly qualified applicants;~~

~~(b) establish examinations and passing scores for licensure under 37-28-202;~~

~~(c) adopt and implement rules for continuing education requirements to ensure the quality of respiratory care.~~

(2) The board may:

~~(a) adopt rules necessary to implement the provisions of this chapter; and~~

~~(b) establish relicensing requirements and procedures that the board considers appropriate.”~~

Section 80. Section 37-28-202, MCA, is amended to read:

“37-28-202. Licensing requirements — examination — fees. (1) To be eligible for licensure by the board as a respiratory care practitioner, the applicant shall:

(a) submit to the board an application fee in an amount established by the board and a written *an* application on a form provided by the board demonstrating that the applicant has completed:

(i) high school or the equivalent; and

(ii) a respiratory care educational program accredited or provisionally accredited by the American medical association’s committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education or their successor organizations; and

(b) pass an examination prescribed by the board. The board may use the entry-level examination written by the national board for respiratory care or another examination that satisfies the standards of the national commission for health certifying agencies or the commission's equivalent.

(2) A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "RCP."

Section 81. Section 37-29-306, MCA, is amended to read:

"37-29-306. Licensing. (1) A dentist license is valid for a period established by department rule and expires on the date set by department rule. A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure. In addition, the A dentist shall submit proof that the dentist holds a current cardiopulmonary resuscitation card. ~~The license must bear on its face the address where the licensee's dentist services will be performed.~~

(2) ~~Applications~~ *An application* must be submitted on forms approved by the board and a form furnished by the department. Each application must include all other documentation necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. ~~Applications~~ *An application* must be accompanied by the appropriate fees.

~~(3) This section may not be interpreted to conflict with 37-1-138."~~

Section 82. Section 37-31-203, MCA, is amended to read:

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

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

Section 83. Section 37-31-302, MCA, is amended to read:

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

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

(3) A person may not operate or manage a salon or shop without a license.

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

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

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

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

Section 84. Section 37-31-303, MCA, is amended to read:

“37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach barbering, cosmetology, electrology, esthetics, or manicuring shall file an application ~~prescribed by the board~~ *provided by the department* and pass the examination prescribed by the board ~~in order~~ to qualify for licensure. ~~The license must be renewed in accordance with the provisions of 37-31-322.”~~

Section 85. Section 37-31-304, MCA, is amended to read:

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

(a) barbering, the person shall obtain a license to practice barbering from the department. ~~Before a person may practice;~~

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

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

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

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

(2) (a) To be eligible to take the examination to practice barbering, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a ~~registered~~ *licensed* barbering school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board.

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

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

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

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

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

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

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

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

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

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

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

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

Section 86. 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, 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, a person must:

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

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a ~~registered~~ *licensed* school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher’s examination.

(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 ~~registered~~ 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 ~~registered~~ 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 registered 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 87. Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination — reexamination — exemption Exemption for persons with disabilities. (1) ~~Examinations for a license to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring must be held at places and times specified by the board. The examinations may not be confined to a specific method or system. The board may contract with an outside agency for examination and grading services.~~

~~(2) Persons~~ *A person with a physical disabilities disability who is trained for barbering, cosmetology, electrology, esthetics, or manicuring by the department of public health and human services are is, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a school of barbering, cosmetology, electrology, esthetics, or manicuring, the department shall issue the person the necessary certificate or license to practice the profession in this state."*

Section 88. Section 37-31-311, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 89. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (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 ~~or a school's certificate of registration~~.

(2) Upon application for a license, a salon or shop shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a salon or shop, upon payment of the initial inspection fee, a temporary permit authorizing 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 occurs first. A temporary permit is not renewable.

(4) The department shall require the inspector or inspectors, appointed as provided in subsection (1), to conduct an annual inspection of each salon or shop in the state."

Section 90. Section 37-31-323, MCA, is amended to read:

“37-31-323. Fees. (1) Fees for licenses and certificates of registration must be paid to the department in amounts prescribed by the board.

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

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

Section 91. Section 37-34-201, MCA, is amended to read:

“37-34-201. Powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in *Title 37, chapter 1, and this section*; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board’s duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application procedure and acceptable certifications for each category of license;

~~(b) the establishment of license fees commensurate with actual costs;~~

~~(e)~~(b) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303; and

~~(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses consistent with the provisions in 37-1-138;~~

~~(e) the adoption of disciplinary standards for licensees;~~

~~(f) the establishment of hearing procedures; and~~

~~(g)~~(c) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation.”

Section 92. Section 37-34-305, MCA, is amended to read:

“37-34-305. Licensure application procedures. (1) An applicant shall submit an application for a license to the board ~~upon the forms prescribed and furnished by the board~~ and shall pay an application fee set by the board.

(2) Upon receipt of the application and fee, the ~~board~~ department shall issue a license for a clinical laboratory scientist, a clinical laboratory specialist, or a clinical laboratory technician to any person who meets the qualifications specified by the board as set forth in rules adopted by the board pursuant to 37-34-201 and 37-34-303.

~~(3) A license issued under this chapter must be renewed on or before the date set by department rule.~~

~~(4) Except for the assessment provided in 37-1-101(G), money paid for application, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.~~

Section 93. Section 37-35-103, MCA, is amended to read:

“37-35-103. Department powers and duties. (1) The department shall:

- (a) ~~examine~~ license; and renew the licenses of qualified applicants;
- (b) adopt rules:
 - (i) for eligibility requirements and competency standards;
 - ~~(ii) prescribing the time, place, content, and passing requirements of the licensure and competency examinations and passing scores for licensure under 37-35-202;~~
 - ~~(iii) for application forms and fees for licensure and for renewal and licensure expiration dates; and~~
 - ~~(iv)(ii) defining any unprofessional conduct that is not included in 37-1-316 37-1-410; and~~
 - ~~(e)(iii) adopt and implement rules setting criteria for training programs, internships, and continuing education requirements to ensure the quality of addiction counseling.~~

(2) The department may:

- (a) adopt rules necessary to implement the provisions of this chapter;
- (b) adopt rules specifying the scope of addiction counseling that are consistent with the education required by 37-35-202; and
- (c) establish licensure requirements and procedures that the department considers appropriate.”

Section 94. Section 37-40-302, MCA, is amended to read:

“37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form ~~prescribed~~ *furnished* by the ~~board~~ *department*.

(2) An applicant must have a minimum of a bachelor’s degree in environmental health or its equivalent from an accredited university or college ~~and shall pass an examination given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule.~~

(3) If the applicant meets the board’s standards and passes the examination prescribed by the board, the department shall issue a certificate of registration.

~~(4) Holders~~ *A holder of a current certificate is entitled to append to their the holder’s name the initials “R.S.”*”

Section 95. Section 37-42-304, MCA, is amended to read:

“37-42-304. Application for operator’s certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost ~~as established pursuant to 37-1-134~~, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid.”

Section 96. Section 37-42-308, MCA, is amended to read:

“37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134, except that the department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal funds received to fund the administration of the program.

(2) Subject to subsection (6), if a certificate holder does not apply for a renewal of the certificate before July 1 and remit to the department the necessary renewal fee, the department shall suspend the certificate. Subject to subsection (6), the department shall revoke any certificate that remains suspended for a period of more than 30 days. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of ~~its~~ *the department's* intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension must be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through the person's own fault desires to continue as a water or wastewater plant operator, the person shall ~~make application~~ *apply* to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

(6) This section may not be interpreted to conflict with the provisions of 37-1-138.”

Section 97. Section 37-47-101, MCA, is amended to read:

“37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Accompany” means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) “Base of operations” means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.

(3) “Board” means the board of outfitters provided for in 2-15-1773.

(4) “Camp” means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.

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

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means ~~that the period beginning January 1 and ending December 31 of the same year~~ *indicated on the face of the license for which the license is valid.*

(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201(7).

(10) "Nonresident" means a person other than a resident.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

(12) "Participant" means a person using the services offered by a licensed outfitter.

(13) "Professional guide" means a guide who ~~has met~~ *meets* experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 98. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

~~(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year.~~

~~(2)~~(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

~~(3)~~(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

~~(4)~~(3) establish outfitter standards, guide standards, and professional guide standards;

~~(5)~~(4) adopt:

~~(a) rules of procedure;~~

~~(b)~~(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

~~(e)~~(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

~~(d)~~(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

~~(e)~~(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access management programs.

~~(6)~~(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

~~(7)~~(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection ~~(5)~~(e) (4)(d)."

Section 99. 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 ~~prescribed and~~ furnished by the ~~board~~ 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 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 ~~will~~ *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) ~~Applications~~ *An application* for an outfitter's license must be in the name of an individual person only. ~~Applications~~ *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 100. Section 37-50-304, MCA, is amended to read:

"37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) ~~Persons~~ *A person* serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering ~~this service held themselves out the~~ *armed forces represented to the public as that the person was a public* ~~accountants~~ *accountant* and who ~~were~~ *was* engaged as ~~principals~~ *a principal* in this state in the practice of public accounting as ~~their~~ *the person's* principal occupation prior to service in the armed forces may register with the department within 6 months after the date of ~~their~~ *the person's* separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) ~~In order to~~ To be issued a license as a licensed public accountant, a person who does not qualify under subsection (1) shall successfully complete those portions of the examination ~~provided for in 37-50-308~~ prescribed by the board by rule. The board may require successful completion of alternate portions of the examination for applicants holding valid United States treasury cards at the time of taking the examination.”

Section 101. 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 ~~under 37-51-310~~ 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.”

Section 102. Section 37-51-303, MCA, is amended to read:

“37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is pending shall satisfactorily pass an examination ~~prescribed by or under the supervision of the board. The examination must be given at least once each 6 months and at places within the state that the board prescribes.~~

(2) (a) The examination for a salesperson’s license must include subject portions that the board determines by rule to be appropriate.

(b) If the applicant passes one subject portion of the examination, the applicant is not required to repeat that portion of the examination if the applicant passes the remaining portion within 12 months.

(3) The examination for a broker’s license must be of a more exacting nature and scope and more stringent than the examination for a salesperson’s license.”

Section 103. Section 37-51-305, MCA, is amended to read:

“37-51-305. License — form — delivery — display — pocket card. (1) ~~The board shall prescribe the form of license. A license shall~~ *must* bear the seal of the board.

(2) The license of a real estate salesperson ~~shall~~ *must* be delivered or mailed to the real estate broker with whom the real estate salesperson is associated and ~~shall~~ *must* be kept in the custody and control of the broker.

(3) A broker shall display ~~his~~ *the broker’s* own license conspicuously in ~~his~~ *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 real estate salesperson’s cards only, the name and address of the broker with whom ~~he~~ *the real estate salesperson* is associated.”

Section 104. Section 37-51-603, MCA, is amended to read:

“37-51-603. Qualification of property manager applicants — examination — form of licenses. (1) The board by rule shall require an

applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

~~(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.~~

~~(4)~~(3) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

~~(5)~~(4) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

~~(6)~~(5) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board."

Section 105. Section 37-53-104, MCA, is amended to read:

"37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) ~~format of forms for applications and renewal of registration qualifications for applicants and prescribing any additional applicant information to that must be supplied;~~

(2) documents acceptable in lieu of registration documents under 37-53-204;

(3) conditions that may be placed upon registration under 37-53-212;

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker; ~~and~~

(5) additional information included in a disclosure document; *and*

(6) *fees established pursuant to 37-1-134.*"

Section 106. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) Except as provided in 37-60-303(8), an application for a license must be made on a *an approved form* ~~prescribed by the board~~ and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) one recent photograph of the applicant, of a type prescribed by the board, and two classifiable sets of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application and the applicant's moral character.

(4) The submittal of fingerprints ~~must be~~ *is* a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(5) The board shall send written notification to the chief of police, sheriff, and county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."

Section 107. Section 37-66-304, MCA, is amended to read:

"37-66-304. (Temporary) Qualifications not required — application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license and successfully pass a ~~written~~ *an* examination ~~established~~ *prescribed* by the board.

(2) Each applicant must be admitted to the examination without prerequisite qualifications. (Terminates September 30, 2005—sec. 78, Ch. 492, L. 2001.)

37-66-304. (Effective October 1, 2005) Qualifications and application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license.

(2) Each applicant for licensure must have successfully completed the educational, practical experience, and ~~written~~ examination requirements ~~established~~ *prescribed* by the board."

Section 108. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — examination — fees. (1) ~~Applications~~ *An application* for licensure must be on ~~forms prescribed by the board and a form~~ furnished by the department, ~~must contain statements made under oath showing the applicant's education and that provides for a detailed summary of the applicant's technical work; and that~~ must contain the required references.

(2) The application fee for an engineer intern is as prescribed by the board and must accompany the application. An additional fee is not required for the issuance of a certificate.

(3) The application fee for licensure as a professional engineer is as prescribed by the board for those holding ~~an a board-approved~~ *a board-approved* engineer intern certificate ~~validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes the cost of verification of engineer intern certification or~~

licensure. Upon approval of an application for licensure and passage of the required examination as a professional engineer, the department shall issue a license as a professional engineer.

~~(4) The department, subject to approval by the board, may, on approval of the application and payment of an application fee as prescribed by the board, issue a license as a professional engineer to a person who holds a certificate of qualification or licensure issued to the person by the committee on national engineering certification of the national council of examiners for engineering and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.~~

(4) An applicant for a license as a professional engineer shall file an application and satisfactorily pass an examination prescribed by the board. Upon approval of an application for licensure and passage of the required examination as a professional engineer, the department shall issue a license as a professional engineer.

(5) The application fee for a land surveyor intern is as prescribed by the board and must accompany the application. An additional fee is not required for issuance of a certificate.

(6) The application fee for licensure as a professional land surveyor is as prescribed by the board for those holding a *board-approved* land surveyor intern certificate validated in Montana. ~~For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification.~~ Upon approval of an application for licensure as a professional land surveyor and passage of the required ~~examination~~ *examinations*, the department shall issue a license as a professional land surveyor.

(7) *(a)* The application fee for licensure as both a professional engineer and professional land surveyor is as prescribed by the board for those holding *board-approved* engineer intern and land surveyor intern certificates validated in Montana. ~~For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board.~~

(b) The fee must accompany the application. Upon approval of an application for licensure as a professional engineer and professional land surveyor and passage of the required examinations, the department shall issue a license.

(8) If the board denies the issuance of a license to any applicant, the initial fee deposited must be retained as an application fee.”

Section 109. Section 37-67-321, MCA, is amended to read:

“37-67-321. Emeritus status. (1) A licensee who no longer practices engineering or land surveying may apply to the ~~board~~ *department* for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the ~~board~~ *department* shall issue a license of emeritus status to the applicant and record the applicant's name in the roster as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice engineering or land surveying.

(4) ~~The board~~ *department* shall reissue a license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for licensure, the applicant has met ~~the~~ requirements *set by the board* for maintaining professional competence ~~established under 37-67-315.~~

Section 110. Section 37-68-201, MCA, is amended to read:

"37-68-201. Organization — meetings — rulemaking power — seal.

(1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times ~~if that the board~~ considers necessary.

(3) The board ~~may~~ *shall*:

(a) adopt rules for the administration of this chapter, ~~for the licensing of electrical contractors,~~ and ~~for the examination and licensing of~~ *for the examination of* master and journeyman electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter."

Section 111. Section 37-68-304, MCA, is amended to read:

"37-68-304. Master electricians — application — qualifications — contents of contents of examination — fees. (1) An applicant for a master electrician's license shall furnish written evidence of being a graduate electrical engineer of an accredited college or university and of having 1 year of *legally obtained* practical electrical experience or that the applicant is a graduate of an electrical trade school and has at least 4 years of *legally obtained* practical experience in electrical work or has had at least 5 years of *legally obtained* practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) ~~Applicants~~ *An applicant* for a license as a master electrician shall file an application on ~~forms prescribed by the board and a form~~ furnished by the department, *submit appropriate fees, and satisfactorily pass an examination prescribed by the board.* ~~The board shall, not less than 30 days prior to a scheduled examination, notify each applicant that the evidence submitted with the applicant's application is sufficient to qualify to take the examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant. The place of examinations must be designated by the board, and examinations must be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.~~

(3) ~~The examination must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

(a) ~~the national electric code;~~

(b) ~~cost estimating for electrical installments;~~

(c) ~~procurement and handling of materials needed for electrical installations and repair;~~

- ~~(d) reading blueprints for electrical work;~~
- ~~(e) drafting and layout of electrical circuits; and~~
- ~~(f) knowledge of practical electrical theory.~~

~~(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs. The board shall, not less than 30 days prior to a scheduled examination, notify each applicant that the evidence submitted with the applicant's application is sufficient to qualify to take the examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant. The place of examinations must be designated by the board, and examinations must be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.~~

~~(3) The examination must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

- ~~(a) the national electric code;~~
- ~~(b) cost estimating for electrical installments;~~
- ~~(c) procurement and handling of materials needed for electrical installations and repair;~~
- ~~(d) reading blueprints for electrical work;~~
- ~~(e) drafting and layout of electrical circuits; and~~
- ~~(f) knowledge of practical electrical theory.~~

~~(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs."~~

Section 112. Section 37-68-305, MCA, is amended to read:

"37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence of at least 4 ~~years~~ years of apprenticeship in the electrical trade or 4 ~~years~~ years of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant must be made and given as in the case of master electricians' licenses. ~~The examination for a journeyman's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

- ~~(a) the Ohm's law;~~
- ~~(b) the national electric code; and~~
- ~~(c) layout and practical installation of electrical circuits. The examination for a journeyman's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~
 - ~~(a) the Ohm's law;~~
 - ~~(b) the national electric code; and~~
 - ~~(c) layout and practical installation of electrical circuits.~~

(2) An applicant for a residential electrician's license shall furnish written evidence of at least 2 ~~years~~ years of apprenticeship in the electrical trade or 2

~~years' years of legally obtained~~ practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant must be made and given as in the case of master electricians' licenses. ~~The examination for a residential electrician's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

- ~~(a) the Ohm's law;~~
- ~~(b) the national electric code; and~~

~~(c) layout and practical installation of electrical circuits. The examination for a residential electrician's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application in the following subjects:~~

- ~~(a) the Ohm's law;~~
- ~~(b) the national electric code; and~~
- ~~(c) layout and practical installation of electrical circuits."~~

Section 113. Section 37-68-307, MCA, is amended to read:

~~"37-68-307. Examination procedure — third-party services — issuance of master, journeyman, or residential electrician's license — expiration.~~ (1) To ensure impartiality, the examination for either the residential, master's, or journeyman's license must be administered by the department. The department may use a third party to provide examination and grading services. The examination passing grade is 75%.

~~(2) If it is determined that the applicant has passed the examination, the department shall issue to the applicant a license that authorizes the licensee to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.~~

~~(3) Each original license expires on the renewal date established by the department by rule if it is not more than 3 years after the date of issuance."~~

Section 114. Section 37-68-310, MCA, is amended to read:

~~"37-68-310. License renewal period — renewal~~ *Renewal of lapsed licenses.* (1) Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board or ~~unless the department changes the duration of the renewal period, must be renewed for a period of 3 years by the department on application for renewal made to the department on or before the renewal date set by department rule and on the payment of a renewal fee. If application for renewal is not made on or before the renewal date, an additional fee prescribed by board rule must be paid.~~ It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. Subject to subsection (2), a lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license.

~~(2) This section may not be interpreted to conflict with 37-1-138."~~

Section 115. Section 37-68-312, MCA, is amended to read:

“37-68-312. Electrical contractor’s license — application — issuance — fees — renewal. Each electrical contractor shall, on or before the date set by department rule, file with the department an application ~~in writing together with the appropriate fees for each firm operated by the electrical contractor in this state for renewal of the license. A license may not be issued or renewed until the applicant meets the licensure requirements and has paid to the department a license fee set by the board for each firm operated by the electrical contractor.~~ Licenses must bear the date of issuance or renewal. A license must be renewed for a 3-year period upon payment to the department of the license fee on or before the renewal date and upon meeting the requirements set by board rule.”

Section 116. Section 37-69-304, MCA, is amended to read:

“37-69-304. Qualifications of applicants for journeyman plumber’s license — restriction on authority — fees — third-party services. (1) The following requirements must be met by applicants for a journeyman plumber’s license:

(a) a specific record of ~~5 years~~ *years of legally obtained* experience in the field of plumbing ~~of a character satisfactory to the board.~~ This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department ~~of labor and industry~~ or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination ~~conducted by the department, subject to 37-1-101(4), testing the applicant’s knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration competence in the special skills required in the field of plumbing prescribed by the board conducted by the department, subject to 37-1-101(4), testing the applicant’s knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration competence in the special skills required in the field of plumbing.~~

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

~~(3) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs.~~

~~(4) The department may use a third party to provide examination and grading services.”~~

Section 117. Section 37-69-305, MCA, is amended to read:

“37-69-305. Qualifications of applicants for master plumber’s license — restriction on authority — fees — third-party services. (1) The following requirements must be met by an applicant for a master plumber’s license:

(a) evidence of ~~4 years~~ *years of* experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of ~~3 years~~ *years* of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination ~~for master plumbers testing the applicant's knowledge of the field of plumbing and demonstrating skill and ability in the field of plumbing prescribed by the board for master plumbers testing the applicant's knowledge of the field of plumbing and demonstrating skill and ability in the field of plumbing.~~

(2) For purposes of subsection (1), ~~a year's~~ *1 year* of experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow the master plumber's license to be used by any person or firm, corporation, or business other than the master plumber's own for the purpose of obtaining permits or for doing plumbing work under the license.

~~(4) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.~~

~~(5) The department may use a third party to provide examination and grading services."~~

Section 118. Section 37-69-306, MCA, is amended to read:

"37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). ~~The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.~~

~~(2) The applicant must be examined as to the applicant's qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine the applicant's skill and qualifications as a master plumber or journeyman plumber.~~

(2) ~~The applicant must,~~ upon successfully passing ~~the an~~ examination prescribed by the board, shall be issued a license authorizing ~~him~~ *the applicant* to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

~~(3)(3)~~ In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. ~~No~~ An individual, firm, or corporation may *not* do the work of a master plumber unless licensed under this chapter.

~~(4)(4)~~ In addition to the temporary permits authorized in 37-1-305, the board ~~may, on a case-by-case basis at the board's discretion and on a case-by-case basis at the board's discretion~~ in accordance with criteria determined by ~~the board~~ *the board*, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible ~~but~~ who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date."

Section 119. Section 37-69-401, MCA, is amended to read:

“37-69-401. Medical gas piping installation endorsement. (1) A medical gas piping installation endorsement entitles the holder to install pipe used solely for transporting gases used for medical purposes.

(2) To be eligible for endorsement under this section, a person must meet all requirements for endorsements established by the board by rule.

(3) A person with a valid medical gas piping installation endorsement from another state may install medical gas piping in this state.

(4) The board shall by rule establish the requirements for obtaining a medical gas piping installation endorsement. ~~Fees must be established by rule and must be commensurate with the costs of administering the medical gas piping installation endorsement program.”~~

Section 120. Section 37-72-102, MCA, is amended to read:

“37-72-102. Penalty — injunction. (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, ~~or 37-72-301 through, 37-72-302, 37-72-304, 37-72-305, or 37-72-307~~ or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.”

Section 121. Section 37-72-202, MCA, is amended to read:

“37-72-202. General rulemaking power. The department shall adopt rules to:

(1) implement the training and experience requirements of 37-72-302;

(2) prescribe the amount of the fees provided for in 37-72-301 ~~and 37-72-303 through 37-72-306, 37-72-304, and 37-72-305~~, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;

(3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation under 37-72-203(2), the department does not have the power under this chapter to make inspections into construction blasting and may not adopt rules providing for ~~such inspections related to construction blasting~~ or for inspectors to carry out ~~such inspections related to construction blasting~~;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the department under this chapter and govern ~~its department~~ proceedings under 37-72-203.”

Section 122. Section 37-72-305, MCA, is amended to read:

“37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of an application and application fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing the person to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements

substantially equivalent to the requirements of 37-72-301 through ~~37-72-303 and 37-72-302.~~"

Section 123. Section 37-76-109, MCA, is amended to read:

"37-76-109. Registration and renewal fees. (1) An application for registration or renewal of registration must be accompanied by a fee of ~~\$200.~~

(2) All fees and money received by the department must be deposited in ~~a~~ *the* state special revenue *fund in an* account for use by the department in performing the duties required by this chapter."

Section 124. Section 50-16-201, MCA, is amended to read:

"50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, ~~in order to ensure for the purpose of ensuring~~ a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202~~(5)~~ or licensed as a physician assistant-certified pursuant to 37-20-203."

Section 125. Section 50-74-312, MCA, is amended to read:

"50-74-312. Review of license rejection — waiting period. (1) An applicant for a license under the provisions of this chapter whose application has been rejected may, within 45 days after the date of the rejection, set forth in writing any arguments opposing the rejection and request a review by the department. The request must be addressed to the department and must be signed by the applicant.

(2) Within 2 days after receiving the request, the department shall notify the applicant in writing that on a certain day, not less than 5 days or more than 30 days after receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review. At least 2 days before the day set for the review, the applicant may designate in writing to the department of labor and industry the name of an engineer holding a valid license of equal or higher grade than the one applied for, and the engineer may testify on behalf of the applicant at the review.

(4) After the review, if the department of labor and industry determines that the applicant is entitled to the license, the department shall issue the license. If the department affirms the decision to not issue the license, the applicant ~~is required to~~ *may* reapply to take the license examination, as provided in ~~50-74-309 and~~ 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license.”

Section 126. Section 80-8-207, MCA, is amended to read:

“80-8-207. Dealers. (1) ~~It is unlawful for a~~ *A person to may not* sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer’s license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of ~~its~~ *the dealer’s* field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of \$45. ~~Dealers~~ *A dealer* applying for renewal of a license shall ~~do so~~ *apply* on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a \$25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser’s license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser’s license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(4) The department shall assess an additional annual license fee of \$10 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in *an account* in the state special revenue ~~account~~ *fund* pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 ~~and 37-7-303~~, veterinarians licensed as provided for in 37-18-302 ~~and 37-18-303~~, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, ~~provided that~~ *if* the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians ~~shall~~ *must* meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules.”

Section 127. Repealer. Sections 37-3-346, 37-4-203, 37-4-303, 37-4-403, 37-6-303, 37-7-303, 37-8-431, 37-10-307, 37-11-305, 37-11-308, 37-11-309, 37-12-307, 37-13-306, 37-13-307, 37-14-303, 37-14-309, 37-14-310, 37-15-304, 37-15-306, 37-15-308, 37-15-312, 37-16-403, 37-16-404, 37-16-407, 37-17-303, 37-17-305, 37-17-306, 37-17-307, 37-17-308, 37-18-203, 37-18-303, 37-18-307, 37-19-306, 37-22-303, 37-22-304, 37-23-103, 37-23-205, 37-24-304, 37-24-308, 37-25-307, 37-28-203, 37-29-304, 37-29-305, 37-31-321, 37-31-322, 37-35-203, 37-40-304, 37-40-305, 37-47-312, 37-50-308, 37-50-317, 37-51-310, 37-53-103, 37-54-210, 37-54-211, 37-54-311, 37-60-312, 37-65-304, 37-65-306, 37-66-307, 37-67-315, 37-67-316, 37-67-318, 37-69-307, 37-72-303, 37-72-306, 50-39-105, 50-39-106, 50-74-309, 50-74-313, and 50-76-105, MCA, are repealed.

Section 128. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 468

[HB 186]

AN ACT REGULATING THE OPERATION OF VARIOUS TYPES OF VEHICLES; DEFINING "MOTORIZED NONSTANDARD VEHICLE" AND "ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE"; PROHIBITING THE OPERATION OF MOTORIZED NONSTANDARD VEHICLES ON CERTAIN WAYS OF THIS STATE OPEN TO THE PUBLIC UNLESS AUTHORIZED BY THE LOCAL GOVERNING BODY; AUTHORIZING THE OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES ON CERTAIN SIDEWALKS, ROADS, AND STREETS; REVISING THE DEFINITIONS OF "MOTOR VEHICLE", "MOTORCYCLE", AND "MOTOR-DRIVEN CYCLE"; CLARIFYING THAT LOCAL AUTHORITIES MAY REGULATE MOTORIZED NONSTANDARD VEHICLES ON SIDEWALKS, STREETS, AND HIGHWAYS UNDER THEIR JURISDICTION; AMENDING SECTIONS 33-23-204, 61-1-102, 61-1-105, 61-1-106, AND 61-12-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Motorized nonstandard vehicle. (1) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(a) is propelled by its own power, using an internal combustion engine or an electric motor;

(b) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(c) 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.

(2) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(3) The term does not include an electric personal assistive mobility device, as defined in [section 2], or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

Section 2. Electric personal assistive mobility device. “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.

Section 3. Unlawful operation of motorized nonstandard vehicle — exception. A person may not operate a motorized nonstandard vehicle on ways of this state open to the public unless the operation is specifically authorized by ordinance or regulation passed by the local governing body of the county, city, or town for a public way under its jurisdiction.

Section 4. Authorized operation of electric personal assistive mobility devices. Electric personal assistive mobility devices, as defined in [section 2], are permitted to operate on sidewalks, unless they are prohibited by official traffic control devices, on bike paths, and on roads and streets that have a speed limit of 35 miles an hour or less.

Section 5. Section 33-23-204, MCA, is amended to read:

“33-23-204. Definitions. As used in this part, the following definitions apply:

(1) (a) “Motor vehicle” means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state.

(b) The term does not include a ~~bicycle as defined in 61-1-123~~ *bicycle, as defined in 61-1-123, an electric personal assistive mobility device, as defined in [section 2], and a motorized nonstandard vehicle, as defined in [section 1].*

(2) “Motor vehicle liability policy” means a policy of automobile or motor vehicle insurance against liability required under Title 61, chapter 6, parts 1 and 3, and all additional coverages included in or added to the policy by rider, endorsement, or otherwise, whether or not required under Title 61, including, without limitation, uninsured, underinsured, and medical payment coverages.”

Section 6. Section 61-1-102, MCA, is amended to read:

“61-1-102. Motor vehicle. (1) “Motor vehicle”:

(a) means a vehicle propelled by its own power and designed ~~or used~~ to transport persons or property upon the highways of the state;

(b) for the purpose of chapter 3, includes trailers and semitrailers;

(c) for the purpose of chapter 3, parts 1 and 2, includes campers, as defined in 61-1-129, motorboats and personal watercraft, as defined in 23-2-502, sailboats, as defined in 23-2-502, that are 12 feet in length or longer, and snowmobiles, as defined in 23-2-601.

(2) The term does not include a ~~bicycle as defined in 61-1-123~~ *bicycle, as defined in 61-1-123, an electric personal assistive mobility device, as defined in [section 2], and a motorized nonstandard vehicle, as defined in [section 1].*”

Section 7. Section 61-1-105, MCA, is amended to read:

“61-1-105. Motorcycle. (1) “Motorcycle” means a motor vehicle having ~~not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself~~ *a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.*

(2) A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(3) The term does not include a tractor, ~~or a bicycle as defined in 61-1-123 a motorized nonstandard vehicle, as defined in [section 1], or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.~~

Section 8. Section 61-1-106, MCA, is amended to read:

“61-1-106. Motor-driven cycle. (1) “Motor-driven cycle” means ~~every a~~ motorcycle, including ~~every a~~ motor scooter, with a motor ~~which produces not to exceed 5 horsepower that produces five-brake horsepower or less. The term does not include a bicycle as defined in 61-1-123.~~

(2) ~~The term does not include a motorized nonstandard vehicle, as defined in [section 1].”~~

Section 9. Section 61-12-101, MCA, is amended to read:

“61-12-101. Powers of local authorities to regulate traffic. The provisions of ~~chapter~~ *chapters* 8 and ~~chapter~~ 9 ~~shall not be deemed to do not~~ prevent local authorities with respect to *sidewalks*, streets, and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) regulating the standing or parking of vehicles;
- (2) regulating the traffic by means of police officers or traffic control devices;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles ~~thereon~~ *on those highways* be moved in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway and requiring that all ~~the~~ vehicles stop before entering or crossing ~~the same~~, *a through highway* and designating any intersection as a stop intersection; and requiring all vehicles to stop at one or more entrances to ~~such stop~~ intersections;
- (7) restricting the use of highways as authorized in 61-10-128(2);
- (8) regulating the operation of bicycles and requiring the registration and licensing of ~~same bicycles~~, including ~~the requirement of requiring~~ a registration fee;
- (9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
- (10) altering the speed limits as authorized ~~herein~~ *in Title 7, chapter 14, and Title 61, chapter 8*;
- (11) regulating the ~~driving operating of vehicles~~ *a vehicle* by ~~any a~~ person who is ~~an~~ a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree ~~which that~~ renders ~~him~~ *the person* incapable of safely ~~driving operating~~ *a vehicle* within the incorporated limits of any city or town;
- (12) regulating or prohibiting ~~any a~~ person who is under the influence of intoxicating liquor from ~~driving operating~~ or being in actual physical control of ~~any a~~ vehicle within the incorporated limits of ~~any a~~ city or town;
- (13) regulating or prohibiting the ~~driving of vehicles~~ *operation of a vehicle* by ~~any a~~ person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of ~~any a~~ city or town;

(14) enacting as ordinances any ~~and all~~ provisions of chapter 8 or ~~chapter 9~~ and any ~~and all~~ other laws regulating traffic, pedestrians, vehicles, and operators ~~thereof of vehicles~~, not in conflict with state law or federal regulations and to enforce the same ~~within their jurisdiction~~ ordinances; and

(15) *regulating the operation of motorized nonstandard vehicles, as defined in [section 1], on sidewalks, streets, and highways.*"

Section 10. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61, chapter 1, part 1, apply to [sections 1 and 2].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [sections 3 and 4].

Section 11. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 1 of this act] is void, internal references to [section 1] in [this act] are changed to 61-1-101, and the following definition is inserted into 61-1-101 as amended by Senate Bill No. 285:

"(28) (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."

Section 12. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then [section 2 of this act] is void, internal references to [section 2] in [this act] are changed to 61-1-101, and the following definition is inserted into 61-1-101 as amended by Senate Bill No. 285:

"(13) "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."

Section 13. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then subsection (b) of the definition of "motorcycle" in 61-1-101 as amended by Senate Bill No. 285 reads:

"(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."

Section 14. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then subsection (b) of the definition of "motor-driven cycle" in 61-1-101 as amended by Senate Bill No. 285 reads:

“(b) The term does not include a bicycle as defined in 61-8-102 or a motorized nonstandard vehicle.”

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

Approved April 28, 2005

CHAPTER NO. 469

[HB 188]

AN ACT GENERALLY REVISING THE SECURITIES AND INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; CLARIFYING A DEPOSITORY FOR SECURITIES EXAMINATION COSTS; CLARIFYING VARIOUS ACCOUNT, MORTALITY TABLE, AND MANUAL REFERENCES; REVISING THE APPLICABILITY OF CERTAIN REPORTING PENALTY PROVISIONS; EXPANDING REINSURANCE OPTIONS FOR FARM MUTUAL INSURERS; EXCLUDING CERTAIN UNALLOCATED ANNUITY CONTRACTS FROM THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACCOUNT; CHANGING A REFERENCE TO SURPLUS LINES PRODUCER FEE; ADDING A PRIME RATE FACTOR TO CERTAIN INTEREST RATE PAYMENTS; ALLOWING INCLUSION OF THE HIGHWAY TRAFFIC SAFETY FEE IN A PREMIUM REDUCTION; REVISING THE DEFINITION OF “CONSULTANT”; CHANGING REFERENCES TO APPLICATION FORMS; SPECIFYING HOW CRIMINAL BACKGROUND CHECKS MAY BE HANDLED; CLARIFYING APPLICATION OF CONTINUING EDUCATION PROVISIONS TO INDIVIDUALS AND REMOVING A CARRYFORWARD PROVISION; ADDING REPORTING AND COMPLIANCE REQUIREMENTS FOR RENTAL VEHICLE ENTITIES; LIMITING INTEREST DUE ON CLAIMS; REVISING THE DATE FOR AN EXEMPTION RELATED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY PRIVACY REGULATIONS; CLARIFYING INCONTESTABILITY OF CERTAIN LIFE INSURANCE EXCHANGE OR CONVERSION POLICIES; INCLUDING INTENT NOTIFICATION IN CHARITABLE GIFT ANNUITY REQUIREMENTS; REVISING DOWNWARD THE NUMBER OF EMPLOYEES NECESSARY FOR CERTAIN GROUP INSURANCE POLICIES; CLARIFYING POLICY COVERAGE OF NEWBORNS; CLARIFYING THE DEFINITION OF “CREDITABLE COVERAGE”; EXCLUDING EXCEPTED BENEFIT PLANS FROM CONVERSION REQUIREMENTS; DEFINING RESIDENCY FOR THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING RULEMAKING AUTHORITY RELATED TO THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING REFERENCES TO THE COMPREHENSIVE HEALTH ASSOCIATION PORTABILITY PLAN; CLARIFYING PERMISSIBLE OFFSET FOR PERSONAL PROPERTY LOSS; CLARIFYING PROVISIONS THAT APPLY JOINTLY TO A CAPTIVE INSURANCE COMPANY FORMED AS A RECIPROCAL INSURER; REPEALING VALUATION PROVISIONS FOR BONDS, CERTAIN SECURITIES, PROPERTY, AND PURCHASE MONEY MORTGAGES; AMENDING SECTIONS 30-10-115, 30-10-209, 33-2-305, 33-2-523, 33-2-701, 33-3-431, 33-4-101, 33-4-503, 33-10-203, 33-12-107, 33-16-222, 33-17-102, 33-17-211, 33-17-220, 33-17-301, 33-17-401, 33-17-503, 33-17-1203, 33-17-1205, 33-17-1502, 33-18-232, 33-19-105, 33-20-105, 33-20-704, 33-20-1101, 33-22-101, 33-22-140, 33-22-508, 33-22-1501,

33-22-1502, 33-22-1513, 33-22-1514, 33-22-1515, 33-22-1516, 33-22-1517, 33-22-1803, 33-24-103, 33-28-105, AND 33-28-202, MCA; REPEALING SECTIONS 33-2-532, 33-2-533, 33-2-534, AND 33-2-535, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

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

Section 1. Section 30-10-115, MCA, is amended to read:

“30-10-115. Deposits to general fund — 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 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 and examinations. Any excess fees must be deposited in the general fund.”

Section 2. Section 30-10-209, MCA, is amended to read:

“30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of \$200 for the first \$100,000 of initial issue or portion of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than \$200 or more than \$1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a 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 *and examination costs collected under 30-10-210*, all fees, ~~examination charges~~, 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 3. Section 33-2-305, MCA, is amended to read:

“33-2-305. Licensing of surplus lines insurance producer — fee. (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance producer’s license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance producer’s license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the ~~annual~~ fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application ~~on~~ in a form ~~supplied~~ *approved* by the commissioner; and

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more.

(3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 4. Section 33-2-523, MCA, is amended to read:

"33-2-523. Contracts on or after operative date of 33-20-213 — valuation. (1) This section applies to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all the policies and contracts issued prior to October 1, 1995, ~~must be~~ is the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all policies and contracts ~~must be~~ is the commissioner's reserve valuation methods defined in 33-2-525, 33-2-526(3) and (4), and 33-2-537, 5% interest for group annuity and pure endowment contracts, and 3 1/2% interest for all other policies and contracts or, in the case of life insurance policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for all other policies issued prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and 4 1/2% interest for all other policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(i) the ~~commissioner's~~ 1941 *commissioners* standard ordinary mortality table for policies issued prior to the operative date of 33-20-206, as amended, and the ~~commissioner's~~ 1958 *commissioners* standard ordinary mortality table for policies issued on or after that operative date but prior to January 1, 1989, except that for any category of the policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured; ~~or~~

(ii) for policies issued on or after January 1, 1989:

(A) the ~~commissioner's~~ 1980 *commissioners* standard ordinary mortality table;

(B) at the election of the ~~company insurer~~ for any one or more specified ~~plans~~ *policies* of life insurance, the ~~commissioner's~~ 1980 *commissioners* standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after ~~1980~~ 2001 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for policies;

(iii) for policies issued on or after January 1, 2005, and before January 1, 2009, at the election of the insurer for any one or more specified *policies of life insurance*, the 2001 *commissioners* standard ordinary mortality table; or

(iv) for policies issued on or after January 1, 2009, the 2001 *commissioners* standard ordinary mortality table; or

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued prior to the operative date of 33-20-207 and, for policies issued on or after that operative date, the ~~commissioner's~~ 1961 *commissioners* standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the group annuity mortality table for 1951, any modification of the table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either the tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, ~~either such a table referenced in subsection (2)(f)(i)(A)~~ or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, the tables ~~as may be~~ approved by the commissioner."

Section 5. Section 33-2-701, MCA, is amended to read:

“33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of ~~its~~ *the authorized insurer’s* financial condition, transactions, and affairs as of the preceding December 31. The statement must be:

(a) in the general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. ~~The statement must be;~~

(b) completed in accordance with the annual statement instructions and the ~~accounting practices and procedures manual~~ *Accounting Practices and Procedures Manual* of the national association of insurance commissioners. ~~The statement must be;~~

(c) accompanied by an actuarial opinion attesting to the adequacy of the insurer’s reserves. ~~The statement must be;~~

(d) verified by the oath of the insurer’s president or vice president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic versions of ~~its~~ *the domestic insurer’s* annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for the submission of the quarterly statement electronic filings are as follows:

- (i) the first quarter filing is due May 15;
- (ii) the second quarter filing is due August 15; and
- (iii) the third quarter filing is due November 15.

(b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.

(3) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer’s affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer’s United States manager or other authorized officer.

(4) The commissioner may refuse to accept the fee for renewal of the insurer’s certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file ~~its~~ *the insurer’s* annual statement when due or within an extension of time that the commissioner may grant.

(5) A director, officer, ~~insurance producer,~~ or employee of a company who subscribes to, makes, or concurs in making or publishing an annual statement or any other statement required by law knowing that the statement contains any material statement that is false shall be punished by a fine of not more than \$1,000.

(6) The commissioner may impose a fine not to exceed \$100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of \$1,000.”

Section 6. 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 ~~its~~ *the insurer’s* organization, to provide ~~it~~ *the insurer* with surplus funds, or for any purpose of ~~its~~ *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 ~~than~~ of the rate established in 25-9-205, ~~and~~ *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 dated 3 business days prior to the execution of the agreement. The agreement must specify whether the interest constitutes a liability of the insurer must be stipulated in the agreement.* 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 ~~its~~ *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 ~~it~~ *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 7. Section 33-4-101, MCA, is amended to read:

“33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; ~~33-2-532 through 33-2-535~~; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; 33-2-1501; 33-2-1517(2); 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapters 18 and 19.”

Section 8. Section 33-4-503, MCA, is amended to read:

“33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers *and reinsurers meeting the requirements of 33-2-1216(3)* and may accept reinsurance from other farm mutual insurers.”

Section 9. Section 33-10-203, MCA, is amended to read:

“33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. ~~All~~ *A* member insurer must be and remain ~~members~~ *a member* of the association as a condition of ~~their~~ *the member's* authority to transact insurance in this state. The association shall perform ~~its~~ functions under the plan of operation established and approved under 33-10-216 and shall exercise ~~its~~ powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain two accounts:

(a) the health insurance account; and

(b) the life insurance and annuity account that includes the following subaccounts:

(i) the life insurance account;

(ii) the annuity account that includes contracts owned by a governmental retirement plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code, but does not otherwise include unallocated annuities; and

(iii) the unallocated annuity account that must ~~include~~ *exclude* unallocated annuity contracts owned by a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code.

(3) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state.”

Section 10. Section 33-12-107, MCA, is amended to read:

“33-12-107. Valuation of investments. For the purposes of this chapter, the value or amount of an investment acquired or held under this chapter or an investment practice engaged in under this chapter, unless otherwise specified

in statute, must be the value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the Purposes and Procedures *Manual* of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the ~~Annual Statement Instructions~~ *annual statement instructions*, or any successor valuation procedures officially adopted by the NAIC.”

Section 11. Section 33-16-222, MCA, is amended to read:

“33-16-222. Requirement for rate reduction. (1) Any rates, rating schedules, or rating manuals for liability, bodily injury, or collision coverages of a motor vehicle insurance policy filed with the insurance department must provide for an appropriate premium reduction as determined by the insurer for an insured operator of a covered vehicle who is 55 years of age or older and who has successfully completed a highway traffic safety program as provided by 61-2-102 and 61-2-103.

(2) ~~Any discount~~ *In addition to providing a premium reduction, an insurer may reimburse the fee for participating in the highway traffic safety program.*

(3) *The premium reduction used by the insurer is presumed appropriate unless credible data demonstrates otherwise.”*

Section 12. Section 33-17-102, MCA, is amended to read:

“33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) “Adjuster” means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) “Adjuster license” means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) “Administrator” means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by ~~it~~ *the insurer* in

and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from ~~its~~ *the company's* credit card holders who have authorized ~~it~~ *the company* to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means ~~a person~~ *an individual* who for a fee examines, appraises, reviews, ~~or~~ evaluates, *makes recommendations, or gives advice regarding* an insurance policy, annuity, or pension contract, plan, or program ~~or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.~~

(7) "Consultant license" means a document issued by the commissioner that authorizes ~~a person~~ *an individual* to act as an insurance consultant.

(8) "Individual" means a natural person.

(9) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

(11) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority

specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(12) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

(13) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(14) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

(15) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(16) "Lines of authority" means any kind of insurance as defined in Title 33.

(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

(18) "Person" means an individual or a business entity.

(19) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20) "Sell" means to exchange a contract of insurance by any means, for money or ~~its~~ *the* equivalent, on behalf of an insurance company.

(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(22) "Suspend" means to bar the use of a person's license for a period of time.

(23) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 13. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply ~~on~~ *in* a form ~~specified~~ *approved* by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made ~~using the uniform business entity application~~ *in a form approved by the commissioner.* ~~In order to~~ To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license ~~on~~ *in a form specified approved* by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer *to be* responsible for *the person's* compliance ~~by the person~~ with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

(4) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in ~~its~~ *the association's* name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using ~~it~~ *the name.*"

Section 14. Section 33-17-220, MCA, is amended to read:

"33-17-220. Licensing background examination — entity registry criteria. (1) (a) Each applicant shall obtain a complete background examination. The applicant or insurer shall pay the cost of the background examination. The background examination report must provide information to confirm:

- (i) the applicant's:
 - (A) identity;
 - (B) current address;
 - (C) professional license certification; and
 - (D) military service; and

- (ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and
- (B) regulatory agencies' disciplinary actions concerning the applicant.

(b) The background examination is confidential and may not be held as part of the licensee's public file.

~~(2) An entity may not conduct licensing background examinations unless the entity maintains a current filing with the commissioner. The filing must:~~

- ~~(a) contain a description of the criteria, standards, and procedures used in conducting the background examination;~~
- ~~(b) ensure that the examination will be based on nationally recognized criteria, standards, and procedures; and~~
- ~~(c) ensure confidentiality of the applicant's information.~~

~~(3)(2) For the purpose of obtaining a state and a federal criminal records check pursuant to subsection (1), the commissioner may require a person applying for a license to submit a full set of fingerprints to the commissioner. The commissioner shall submit the fingerprints to the Montana department of~~

justice. The Montana department of justice may exchange this fingerprint data with the federal bureau of investigation.

(3) The commissioner may require fingerprints to be collected and remitted in an electronic format to facilitate periodic resubmission of fingerprints.

(4) The commissioner may contract for the collection, transmission, and retention of fingerprints and may agree to a reasonable fee charged by a contractor for these services. If the commissioner contracts for services, the fee for collecting, transmitting, and retaining of fingerprints must be paid directly to the contractor by the applicant or insurer.

(5) The commissioner is authorized to receive criminal history record information in lieu of the Montana department of justice relating to fingerprints submitted to the federal bureau of investigation.

(6) The commissioner may adopt rules to further implement this section, including but not limited to rules on the length of time that a background examination is valid and rules for the electronic filing of fingerprints.”

Section 15. Section 33-17-301, MCA, is amended to read:

“33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply *to the commissioner* for an adjuster license ~~to the commissioner according to forms that in a form approved by the commissioner prescribes and furnishes.~~ The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.”

Section 16. Section 33-17-401, MCA, is amended to read:

“33-17-401. Nonresident insurance producer — license. (1) A nonresident person, unless denied licensure pursuant to 33-17-1001, must be granted a license if:

(a) the person is currently licensed as a resident and is in good standing in the person’s home state;

(b) the person has submitted the proper request for licensure and has paid the fees required by 33-2-708;

(c) the person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person’s home state or a completed ~~uniform~~ application *in a form approved by the commissioner*; and

(d) the person’s home state awards nonresident insurance producer licenses to residents of this state on the same basis.

(2) A person licensed as a surplus lines producer in that person’s home state must receive a nonresident surplus lines producer license upon meeting the requirements of subsection (1). Except for subsection (1), this section does not amend or supersede any provision of the surplus lines insurance law established in Title 33, chapter 2, part 3.

(3) A person licensed as a limited line credit insurance producer or other type of limited lines producer in that person’s home state must receive a nonresident limited lines producer license upon meeting the requirements of subsection (1), granting the same scope of authority as granted under the license issued by the producer’s home state. For the purposes of this subsection, limited lines insurance is any authority granted by a nonresident’s home state that restricts the authority of the licensee to less than the total authority prescribed in the associated major lines pursuant to 33-17-214(2)(a) through (2)(e).

(4) If a nonresident insurance producer’s state of residence suspends, revokes, or terminates the insurance producer’s insurance license in that state, the insurance producer’s Montana nonresident license automatically terminates. The nonresident insurance producer shall notify the commissioner that the insurance producer’s state of residence has suspended, revoked, or terminated the insurance producer’s insurance license in that state.”

Section 17. Section 33-17-503, MCA, is amended to read:

“33-17-503. Application — fee — expiration. (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file with the office of the commissioner a written application ~~on forms~~ *in a form approved by the commissioner* ~~prescribes~~; and

(b) pay a fee pursuant to 33-2-708, which the commissioner shall forward to the state treasurer to be deposited in the state special revenue fund to the credit of the state auditor’s office.

(2) A consultant license continues in force until lapsed, suspended, revoked, or terminated.”

Section 18. Section 33-17-1203, MCA, is amended to read:

“33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection ~~(4)~~ (3):

(a) ~~a person~~ *an individual* licensed to act as an insurance producer or as a consultant other than ~~a person~~ *an individual* licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education;

(b) ~~a person~~ *an individual* licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or limited lines credit insurance;

(c) ~~a person~~ *an individual* licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

~~(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a biennium than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next biennium.~~

~~(2)~~(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

~~(4)~~(3) The minimum continuing education requirements do not apply to:

(a) ~~a person~~ *an individual* holding a temporary license issued under 33-17-216; or

(b) an insurance producer or consultant otherwise exempted by the commissioner.”

Section 19. Section 33-17-1205, MCA, is amended to read:

“33-17-1205. Compliance — failure to comply — rulemaking authority. (1) Each ~~person~~ *individual* subject to the requirements of 33-17-1203 shall file biennially in a format supplied by the commissioner certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that ~~person~~ *individual* during the preceding biennium.

(2) If ~~a person~~ *an individual* fails to comply with this section, the ~~person’s~~ *individual’s* license lapses. *An individual with a lapsed license may not conduct insurance business under another person’s license, including a business entity license affiliation.*

(3) In the continuing education affidavit, an insurance producer shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer in another jurisdiction or by another governmental agency in this state. As used in this subsection, “final disposition of any criminal action” means a plea agreement or sentence and judgment.

(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all ~~persons~~ *individuals* who have successfully completed an approved continuing education activity during the preceding calendar year.

(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits.”

Section 20. Section 33-17-1502, MCA, is amended to read:

“33-17-1502. Rental vehicle entity license — customer service representative requirements — recordkeeping. (1) A rental vehicle entity may obtain an insurance license as a business entity.

(2) *A rental vehicle entity shall designate an individual licensed insurance producer who is responsible for the rental vehicle entity’s compliance with the insurance laws of this state.*

~~(2)~~(3) A rental vehicle entity or customer service representative may not present rental vehicle insurance information to renters unless the rental vehicle entity is licensed and the customer service representative has been trained as required under 33-17-1503.

~~(3)~~(4) A customer service representative may present rental vehicle insurance information only on behalf of a rental vehicle entity.

~~(4)~~(5) A rental vehicle entity shall supervise a customer service representative who provides rental vehicle insurance under the provisions of this part.

(6) *A rental vehicle entity shall submit to the commissioner an annual report listing each customer service representative presenting rental vehicle insurance information to the public.”*

Section 21. Section 33-18-232, MCA, is amended to read:

“33-18-232. Time for payment of claims. (1) An insurer shall pay or deny a claim within 30 days after receipt of a proof of loss unless the insurer makes a reasonable request for additional information or documents in order to evaluate the claim. If an insurer makes a reasonable request for additional information or documents, the insurer shall pay or deny the claim within 60 days of receiving the proof of loss unless the insurer has notified the insured, the insured’s assignee, or the claimant of the reasons for failure to pay the claim in full or unless the insurer has a reasonable belief that insurance fraud has been committed and the insurer has reported the possible insurance fraud to the commissioner. This section does not eliminate an insurer’s right to conduct a thorough investigation of all the facts necessary to determine payment of a claim.

(2) If an insurer fails to comply with this section and the insurer is liable for payment of the claim, the insurer shall pay an amount equal to the amount of the claim due plus 10% annual interest calculated from the date on which the claim was due. For purposes of calculating the amount of interest, a claim is considered due 30 days after the insurer’s receipt of the proof of loss or 60 days after receipt of the proof of loss if the insurer made a reasonable request for information or documents. Interest payments must be made to the person who receives the claims payment. *Interest is payable under this subsection only if the amount of interest due on a claim exceeds \$5.*

(3) A private cause of action under 33-18-201 or 33-18-242 may not be based on the compliance or noncompliance with the requirements of this section and evidence of compliance or noncompliance with this section is not admissible in any private action based on 33-18-201 or 33-18-242.”

Section 22. Section 33-19-105, MCA, is amended to read:

“33-19-105. Exemption based on federal standards for privacy of individually identifiable health information — notice to commissioner required — rules. (1) ~~Beginning on April 17, 2003, the~~ *The* obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information as to any use or disclosure of personal information that is covered under the HIPAA privacy regulations, except for the following provisions:

(a) ~~Notices~~ *A notice* of insurance information practices described as ~~notices a~~ *notice* of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) ~~Reasons~~ *The reasons* for an adverse underwriting ~~decisions~~ *decision* must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why ~~it~~ *the licensee* is a HIPAA-covered entity.

(4) A licensee may claim an exemption only ~~as to~~ *for* those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A third-party administrator that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any ~~activities~~ *activity* of the third-party administrator that ~~fall~~ *falls* outside of the scope of that agreement ~~are~~ *is* subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, ~~2005~~ *2007*:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption, unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption.”

Section 23. Section 33-20-105, MCA, is amended to read:

“33-20-105. Incontestability. (1) There must be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, is incontestable, except for nonpayment of premiums, after ~~it~~ *the policy* has been in force during the lifetime of the insured for a period of 2 years from ~~its~~ *the policy* date of issue.

(2) ~~(a) A policy~~ *Life insurance coverage issued in connection with as the result of an exchange or a conversion of existing life insurance coverage with the same insurer or its subsidiaries is incontestable from the time of issue, except for nonpayment of premiums, under the following conditions:*

(i) *the person who is covered is alive; and*

(ii) *the policy that is being exchanged or converted has been in effect for 2 years from the date of issue.*

(b) *This subsection (2) does not apply to any amount of insurance provided by the new policy that exceeds the coverage amount that was exchanged or converted.”*

Section 24. Section 33-20-704, MCA, is amended to read:

“33-20-704. Notice to commissioner. (1) A charitable organization that issues or intends to issue qualified charitable gift annuities shall notify the commissioner in writing ~~within 90 days after April 24, 2003, or prior to the date on which it enters~~ *of entering* into the organization’s first qualified charitable gift annuity agreement and shall notify the commissioner on March 1 of each year in which the charitable organization issues or intends to issue qualified charitable gift annuities. The notice must:

(a) be signed by an officer or director of the organization;

(b) identify the organization;

(c) certify that:

(i) the organization is a charitable organization; and

(ii) the annuities issued by the organization are qualified charitable gift annuities.

(2) The organization is not required to submit additional information except:

(a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or

(b) to enable the commissioner to determine appropriate penalties that may be applicable under 33-20-705.”

Section 25. Section 33-20-1101, MCA, is amended to read:

“33-20-1101. Employee groups. ~~The~~ (1) *Subject to the requirements in subsections (2) through (5), the lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements: The employer or trustees must be considered the policyholder.*

~~(1)(2)~~ (a) The employees eligible for insurance under the policy ~~shall~~ *must* be all of the employees of the employer or all of any class or classes ~~thereof of the employer~~ determined by conditions pertaining to their employment. The policy may provide that the term “employees” ~~shall include~~ *includes*:

(i) the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of ~~such the employer’s~~ affiliated corporations, proprietors, or partnerships is under common control. ~~The policy may provide that the term “employees” shall include;~~

(ii) the individual proprietor or partners if the employer is an individual proprietor or a partnership. ~~The policy may provide that the term “employees” shall include; or~~

(iii) retired employees. ~~No~~

(b) A director of a corporate employer ~~shall be~~ *is not* eligible for insurance under the policy unless ~~such person~~ *the director* is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. ~~No~~

(c) ~~An~~ individual proprietor or partner ~~shall be~~ *is not* eligible for insurance under the policy unless ~~he~~ *the individual proprietor or partner* is actively engaged in and devotes a substantial part of ~~his time~~ *working hours* to the conduct of the business of the proprietor or partnership.

~~(2)(3)~~ The premium for the policy ~~shall~~ *must* be paid by the policyholder, either wholly from the employer’s funds or funds contributed by ~~him~~ *the employer* or partly from ~~such the employer’s~~ funds and partly from funds contributed by the insured employees. ~~No~~ A policy may *not* be issued ~~on which if~~ if the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

~~(3)(4)~~ The policy must cover at least ~~10~~ *two* employees at date of issue.

~~(4)(5)~~ The ~~amounts~~ *amount* of insurance under the policy must be based upon ~~some~~ *a* plan precluding individual selection either by the employees or by the employer or trustees.”

Section 26. Section 33-22-101, MCA, is amended to read:

“33-22-101. Exceptions to scope. ~~Parts~~ (1) *Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114,*

33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

~~(1)~~(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

~~(2)~~(b) any group or blanket policy;

~~(3)~~(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

~~(a)~~(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

~~(b)~~(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

~~(4)~~(d) reinsurance.

(2) Section 33-22-301 applies to blanket policies."

Section 27. Section 33-22-140, MCA, is amended to read:

"33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) "Church plan" has the meaning given the term by 29 U.S.C. 1002(33).

(3) "COBRA continuation provision" means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as ~~it~~ *that subsection* relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, Public Law 93-406; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) "Creditable coverage" means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

(vii) the Montana comprehensive health association provided for in 33-22-1503;

(viii) a health plan offered under Title 5, chapter 89, of the United States Code;

(ix) a public health plan;

(x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e);

(xi) a *high-risk pool in any state*.

(b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(6) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(7) "Excepted benefits" means:

(a) coverage only for accident or disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) medicare supplement coverage;

(ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and

(iii) similar supplemental coverage provided under a group health plan.

(8) "Federally defined eligible individual" means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) who does not have other health insurance coverage;

(e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(f) if the individual elected the continuation coverage described in subsection (8)(f).

(9) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(10) "Group health plan" means an employee welfare benefit plan, as defined in, 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

(11) "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

(12) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

(13) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(14) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

(15) "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least ~~2~~ *two* employees on the first day of the plan year.

(16) "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan or group health insurance coverage issued to a large employer.

(17) "Late enrollee" means an eligible employee or dependent, other than a special enrollee under 33-22-523, who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent is not considered a late enrollee if a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(18) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection (18)(a); or

(c) insurance covering medical care referred to in subsections (18)(a) and (18)(b).

(19) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(20) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

(21) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

(22) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan or group health insurance coverage maintained by a small employer as defined in 33-22-1803.

(23) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan."

Section 28. 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~~ *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, ~~or~~ 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 29. 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(1)(b)~~ 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, 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, 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 ~~guarantee~~ *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 ~~(17)~~ (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.

~~(16)~~(17) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

~~(17)~~(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 ~~guarantee~~ *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 30. Section 33-22-1502, MCA, is amended to read:

“33-22-1502. Duties of commissioner — rules. (1) The commissioner shall:

~~(1) adopt rules to carry out the provisions and purposes of this part, including rules:~~

~~(a) regarding late payment penalties or rates of interest charged on unpaid assessments; and~~

~~(b) that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level;~~

~~(2)(a) supervise the creation of the association within the limits described in 33-22-1503;~~

~~(3)(b) approve the selection of the lead carrier by the association and approve the association’s contract with the lead carrier, including the association plan coverage and premiums to be charged;~~

~~(4)(c) conduct periodic audits to ensure the general accuracy of the financial data submitted by the lead carrier and the association; and~~

~~(5)(d) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part; and~~

~~(e) adopt rules to carry out the provisions and purposes of this part, including rules regarding late payment penalties or rates of interest charged on an unpaid assessment.~~

~~(2) The commissioner may adopt rules that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level.”~~

Section 31. Section 33-22-1513, MCA, is amended to read:

“33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual or a TAA-eligible individual to the lead carrier for an association portability plan, the association may not:

- (a) decline to offer an association portability plan; or
- (b) except as provided in subsection (3), impose a preexisting condition exclusion with respect to an individual’s association portability plan coverage if

application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) The association may impose a preexisting condition exclusion as provided in 33-22-1516 with respect to a TAA-eligible individual's association portability plan coverage if that individual does not meet the requirements defining a qualified TAA-eligible individual.

(4) Not less than 88% of the association plan *and the association portability plan* premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(5) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan *and association portability plan* premiums.

(6) (a) Each participating member of the association shall share the losses because of claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount not to exceed 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (6)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.

(ii) (A) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. After 30 days, the association shall charge a member:

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections (6)(a)(ii)(A)(I) and (6)(a)(ii)(A)(II).

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iii) An *associate association* member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The

association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed \$50.

(b) For purposes of this subsection (6), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan *and association portability plan* premiums.

(7) The proportion of the annual assessment allocated to the operation and expenses of the association plan, not to include any amount of late payment penalty or interest charged, may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member.

(8) The association may also accept funding from the federal government, private foundations, and other private funding sources."

Section 32. Section 33-22-1514, MCA, is amended to read:

"33-22-1514. Administration of association plan — rules. (1) The association shall select one lead carrier to issue the association plan *and the association portability plan*. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(2) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of ~~its~~ *the receipt of the request*. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (1) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(3) The lead carrier shall provide all eligible persons involved in the association plan *and the association portability plan* an individual certificate setting forth a statement as to the insurance protection to which the person is

entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(4) The lead carrier shall submit to the association, the legislative finance committee, and the commissioner on a semiannual basis a report of the operation of the association plan *and the association portability plan*. The association ~~must~~ shall determine the specific information to be contained in the report prior to the effective date of the association plan *and the association portability plan*.

(5) The lead carrier shall pay all claims pursuant to this part and shall indicate that the claim was paid by the association plan *or the association portability plan*. Each claim payment must include information specifying the procedure involved ~~in the event~~ if a dispute *arises* over the amount of payment *arises*.

(6) The lead carrier must be reimbursed from the association plan *and the association portability plan* premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan *and the association portability plan*. The association ~~must~~ shall approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(7) The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for ~~its~~ *the lead carrier's* actions, subject to the laws of this state."

Section 33. Section 33-22-1515, MCA, is amended to read:

"33-22-1515. Solicitation of eligible persons. (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan *and the association portability plan* and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner that facilitates public participation in the association plan *and the association portability plan*.

(3) All licensed disability insurance producers may engage in the selling or marketing of the association plan *and the association portability plan*. The lead carrier shall pay an insurance producer's referral fee of at least \$25 to each licensed disability insurance producer who refers an applicant to the association plan *and the association portability plan*, if the applicant is accepted. The amount of the referral fee must be set by the board of directors of the association and is subject to the approval of the commissioner. The referral fees must be paid by the lead carrier from money received as premiums for the association plan *and the association portability plan*.

(4) An insurer, society, health maintenance organization, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance shall notify the applicant of the existence of the association

plan, requirements for being accepted in the association plan, and the procedure for applying to the association plan.”

Section 34. Section 33-22-1516, MCA, is amended to read:

“33-22-1516. Enrollment by eligible person. (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant’s residence in this state;

(b) the name, address, and age of spouse and children, if any, ~~if they~~ *for those who* are to be insured;

(c) written evidence that the person fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan *or the association portability plan*.

(4) A person who obtains coverage under the association plan may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 3 years immediately preceding the filing of an application. The association may not apply a preexisting condition exclusion to coverage under the association portability plan if application for association portability plan coverage is made by a federally defined eligible individual or a qualified TAA-eligible individual within 63 days following termination of the applicant’s most recent prior creditable coverage. The association shall waive any time period applicable to a preexisting condition exclusion for the ~~period of~~ time that any other eligible individual, including an individual who is eligible pursuant to 33-22-1501(7)(a)(ii)(B), was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan.”

Section 35. Section 33-22-1517, MCA, is amended to read:

“33-22-1517. Limitations on eligibility. An individual who purchases a policy of insurance pursuant to 33-22-1516 is no longer eligible for insurance under an association plan *or association portability plan* and is subject to cancellation of enrollment if the individual:

(1) fails to pay the premium for the policy of insurance purchased pursuant to 33-22-1516;

(2) changes residence from Montana to another state;

(3) exceeds the lifetime maximum benefit provided in the ~~association~~ plan;
or

(4) enrolls under another disability insurance policy or plan for health service benefits. However, the individual may maintain enrollment in the association plan *or the association portability plan* during a waiting period applicable to preexisting conditions under the other policy or plan. If the individual maintains the association plan *or the association portability plan* during the waiting period, the association plan *or the association portability plan* may coordinate the benefits with the individual's new policy or plan and the benefits of the association plan *or the association portability plan* are considered secondary to the benefits available under the individual's new policy or plan."

Section 36. 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 or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(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) "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. Health benefit plan 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 37. Section 33-24-103, MCA, is amended to read:

“33-24-103. Specific valuation — loss equal to insured value. (1) This section applies to policies, except motor vehicle insurance policies, ~~which that~~ insure specific listed items of personal property against any loss or damage.

(2) If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then ~~he the insurer~~ shall compute any total loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets *except for the selected deductible in the policy.*”

Section 38. Section 33-28-105, MCA, is amended to read:

“33-28-105. Formation of captive insurance companies. (1) A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations; or

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) In the case of a captive insurance company formed as a corporation and before the articles of incorporation are transmitted to the secretary of state, the incorporators shall file a copy of the proposed articles of incorporation and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed corporation will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed articles of incorporation of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the articles of incorporation and shall return the draft to the proposed incorporators, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft articles of incorporation, the commissioner shall forward the certificate and an approved draft of articles of incorporation to the proposed incorporators. The incorporators shall prepare two sets of the approved articles of incorporation

and shall file one set of articles of incorporation with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(7) (a) A captive insurance company formed as a corporation has the privileges and is subject to the provisions of general corporation law, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control. ~~If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies.~~

(d) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(9) Except as provided in 33-28-306, the provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company may apply to the secretary of state for a

certificate of authority to transact business in this state after the commissioner's certificate is issued."

Section 39. Section 33-28-202, MCA, is amended to read:

"33-28-202. Legal investments. (1) An industrial insured captive insurance company and an association captive insurance company shall comply with the investment requirements contained in ~~33-2-532, 33-2-533~~, Title 33, chapter 12, and the rules promulgated in accordance with these provisions. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(2) A pure 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 40. Repealer. Sections 33-2-532, 33-2-533, 33-2-534, and 33-2-535, MCA, are repealed.

Section 41. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 2005.

(2) [Sections 4, 42, and 43 and this section] are effective on passage and approval.

(3) [Section 22] is effective July 1, 2005.

Section 42. Retroactive applicability. [Section 4] applies retroactively, within the meaning of 1-2-109, to January 1, 2005.

Section 43. Applicability. [Section 18] applies to continuing education reporting periods beginning January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 470

[HB 214]

AN ACT CREATING A CLASS B-13 NONRESIDENT YOUTH BIG GAME COMBINATION LICENSE; PROVIDING TERMS, CONDITIONS, AND SALE CRITERIA FOR THE LICENSE; LIMITING THE NUMBER OF AVAILABLE CLASS B-13 LICENSES AND PROVIDING THAT B-13 LICENSES ARE NOT INCLUDED IN THE LIMIT ON AVAILABLE CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; PROVIDING THAT THE HOLDER OF A CLASS B-13 LICENSE MAY ALSO APPLY FOR A NONRESIDENT ANTLERLESS ELK B TAG; AMENDING SECTIONS 87-2-104 AND 87-2-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. 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. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class A-5, Class A-7, Class B-7, Class B-8, Class B-10, Class B-11, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) When authorized by the commission for game management purposes, the department may issue Class A-9, resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 or Class B-13 license to be eligible for a Class B-12 license. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(5) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species.”

Section 3. Section 87-2-511, MCA, is amended to read:

“87-2-511. (Temporary) Sale and use of Class B-10, ~~and~~ Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant’s hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.

(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.

(9) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(10) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant must provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)

87-2-511. (Effective March 1, 2006) Sale of Class B-10 and Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and 2,000 Class B-11 licenses reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor.

(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all unsold reserved licenses that are available under subsection (6) must be issued by a drawing among all applicants for the respective unreserved licenses.

(8) *The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant must provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application.*

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 1].

Section 5. Coordination instruction. If Senate Bill No. 77 is not passed and approved, then the bracketed language in [section 1(1) of this act] is void.

Section 6. Effective date. [This act] is effective March 1, 2006.

Approved April 28, 2005

CHAPTER NO. 471

[HB 235]

AN ACT IMPLEMENTING CERTAIN 2004 RECOMMENDATIONS OF THE PRIVATE LANDS AND PUBLIC WILDLIFE ADVISORY COUNCIL; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ISSUE CERTAIN BIG GAME LICENSES THROUGH AN ANNUAL LOTTERY AND DEDICATING LOTTERY PROCEEDS TO HUNTING ACCESS ENHANCEMENT PROGRAMS AND LAW ENFORCEMENT; ALLOWING A HUNTER MANAGEMENT PROGRAM COOPERATOR TO DESIGNATE AN IMMEDIATE FAMILY MEMBER TO RECEIVE THE COOPERATOR'S COMPLIMENTARY LICENSE; ALLOWING ANY LANDOWNER WHO IS ENROLLED IN THE BLOCK MANAGEMENT PROGRAM TO RECEIVE BENEFITS PROVIDED UNDER THE HUNTER MANAGEMENT PROGRAM AND THE HUNTING ACCESS ENHANCEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PROVIDE FISCAL ANALYSES OF HUNTING AND FISHING ACCESS ENHANCEMENT PROGRAM FUNDING SOURCES TO THE REVIEW COMMITTEE; AMENDING SECTIONS 87-1-266, 87-1-267, 87-1-269, AND 87-2-702, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

Section 1. Annual lottery of hunting licenses — proceeds dedicated to hunting access enhancement. (1) The commission may issue through a lottery one license each year for each of the following:

- (a) deer;
- (b) elk;
- (c) shiras moose;
- (d) mountain sheep; and
- (e) mountain goat.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

- (3) The commission shall establish rules regarding:
 - (a) the conduct of the lottery authorized in this section;
 - (b) the use of licenses issued through the lottery; and
 - (c) the price of lottery tickets.

(4) All proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access enhancement programs and law enforcement.

Section 2. Section 87-1-266, MCA, is amended to read:

“87-1-266. (Temporary) Hunter management program — benefits for providing hunting access — nonresident landowner limitation — restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the ~~quota of 11,500~~ *limits* established under 87-1-268 and 87-2-505.

(4) (a) *Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license, without charge, if the family member is a resident or a Class B-10 nonresident big game combination license, without charge, if the family member is a nonresident.*

(b) *For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator and spouse and includes legally adopted children and the cooperator’s and spouse’s siblings and siblings’ children.*

(c) *If a cooperator elects to designate an immediate family member to receive a license pursuant to this subsection (4), the cost of the license must be deducted from hunter management program compensation paid to the cooperator.*

(d) *An immediate family member who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.*

(e) *The grant of a Class B-10 nonresident big game combination license to an immediate family member pursuant to this subsection (4) does not affect the limits established in 87-1-268 and 87-2-505.*

~~(4)(a)~~ (5) ~~A resident~~ Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management

program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

~~(b) A nonresident landowner who chooses to receive a license under subsection (3) may also receive assistance under the block management program, but is not eligible to receive cash payments under 87-1-267.~~

~~(5)(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)~~

Section 3. Section 87-1-267, MCA, is amended to read:

“87-1-267. (Temporary) Hunting access enhancement program — benefits for providing hunting access — cooperative agreement — factors for determining benefits earned — restriction on landowner liability. (1) As provided in 87-1-265, the department may establish and administer a voluntary program to enhance the block management program, to be known as the hunting access enhancement program. The program must be designed to provide tangible benefits to participating private landowners who grant access to their land for public hunting.

(2) Land is not eligible for inclusion in the hunting access enhancement program if outfitting or commercial hunting restricts public hunting opportunities.

(3) A contract for participation in the hunting access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

- (a) hunting access management;
- (b) services to be provided to the public;
- (c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must be made available to the public.

(4) If the department determines that the plan referred to in subsection (3) may adversely influence game management decisions or wildlife habitat on public lands outside the block management area, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner’s management goals and personal observations regarding game populations and habitat use must be considered in developing the plan.

(5) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public hunting access. Benefits will be provided to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public hunting provided by a participating landowner;

- (b) wildlife habitat provided;
- (c) resident game populations;
- (d) number, sex, and species of animals taken; and
- (e) access provided to adjacent public lands.

(6) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

(a) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(b) A landowner may direct fire protection payments to be made to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(c) A landowner may receive direct payment to offset insurance costs incurred for allowing public hunting access.

(d) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(7) The commission may provide a total of not more than \$12,000 a year to a landowner who participates in the hunter management program or hunting access enhancement program, or both, ~~subject to the conditions set out in 87-1-266(4).~~

(8) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunting access enhancement program. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)”

Section 4. Section 87-1-269, MCA, is amended to read:

“87-1-269. (Temporary) Report required — review committee. (1) The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make ~~suggestions~~ *recommendations* for funding, modification, or improvement needed to achieve the objectives of the program. *The department shall provide fiscal analyses of all hunting access enhancement program funding sources to the review committee for review and recommendations.*

(b) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of the fishing access enhancement program and make ~~suggestions~~ *recommendations* for funding, modification, or

improvement needed to achieve the objectives of the program. *The department shall provide fiscal analyses of all fishing access enhancement program funding sources to the review committee for review and recommendations.*

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program and the fishing access enhancement program. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.)”

Section 5. Section 87-2-702, MCA, is amended to read:

“87-2-702. Restrictions on special licenses. (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) A person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) *Except as provided in [section 1(2)],* a person who receives a moose, mountain goat, or limited mountain sheep license, with the exception of an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), “limited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is restricted.

(b) *Except as provided in [section 1(2)],* a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), “unlimited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is not restricted.”

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 7. Coordination instruction. (1) If Senate Bill No. 77 is not passed and approved, then [sections 2 through 4 of this act] are void.

(2) If Senate Bill No. 77 is passed and approved, then [section 9 of this act] is void.

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective October 1, 2005.

Section 9. Termination. [Sections 2 through 4] terminate March 1, 2006.

Approved April 28, 2005

CHAPTER NO. 472

[HB 266]

AN ACT IMPLEMENTING THE NOXIOUS WEED MANAGEMENT TRUST FUND CONSTITUTIONAL AMENDMENT; AMENDING SECTIONS 60-3-201, 80-7-508, 80-7-801, 80-7-811, 80-7-814, AND 80-7-815, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 60-3-201, MCA, is amended to read:

“60-3-201. Distribution and use of proceeds of gasoline dealers’ license tax. (1) All money received in payment of license taxes under the Distributor’s Gasoline License Tax Act, except those amounts paid out of the ~~department of transportation’s~~ *department’s* suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows:

- (a) 9/10 of 1% to the state park account;
 - (b) 15/28 of 1% to a snowmobile account in the state special revenue fund;
 - (c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund; and
 - (d) 1/25 of 1% to the aeronautics revenue fund of the ~~department of transportation~~ under the provisions of 67-1-301.
- (e) The remainder of the money must be used:
- (i) by the ~~department of transportation~~ on the highways in this state selected and designated by the commission;
 - (ii) for collection of the license taxes; and
 - (iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.
- (2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.
- (3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.
- (4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the noxious weed management ~~trust~~ *special revenue* fund provided for in ~~80-7-811~~ 80-7-816.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state.”

Section 2. Section 80-7-508, MCA, is amended to read:

“80-7-508. Duties of the cooperative extension service. (1) The cooperative extension service ~~within the department of education~~ shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the cooperative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and *shall* make public the best remedies to be employed.

(2) The cooperative extension service shall cooperate with the agricultural experiment station in providing annual reports required under 80-7-814~~(4)~~.”

Section 3. Section 80-7-801, MCA, is amended to read:

“80-7-801. Definitions. As used in this part, the following definitions apply:

(1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under ~~80-7-814(3)(g)~~ 80-7-814(5)(g) may be given.

(2) "Department" means the department of agriculture established in 2-15-3001.

(3) "Noxious weed" means any weed defined in 7-22-2101(8)(a)."

Section 4. Section 80-7-811, MCA, is amended to read:

"80-7-811. Noxious weed management trust fund. ~~There (1) As required by Article IX, section 6, of the Montana constitution, there is a noxious weed management trust fund of \$10 million. The department shall administer the trust fund in accordance with this part.~~

(2) *Deposits to the principal of the noxious weed management trust fund may include but are not limited to:*

(a) *federal contributions;*

(b) *private donations; and*

(c) *state contributions."*

Section 5. 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.*

~~(1)(2) (a) Except as provided in subsection (1)(b) (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part, excluding unrealized gains and losses, must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least \$2.5 million.~~

~~(b) Money deposited as principal in the trust fund from [former 80-7-822] may not be expended until the principal of the trust fund 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) However, interest 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 in accordance with this section 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.~~

~~(2)(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 a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than \$100,000 for first-class counties, as defined in 7-1-2111.

~~(5)~~(5) The department may expend funds without the restrictions specified in subsection ~~(2)~~ (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.

~~(4)~~(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.

~~(5)~~(7) In making expenditures under subsections ~~(2)~~ (3) and ~~(3)~~ through (5), the department shall give preference to weed management districts and community groups.

~~(6)~~(8) If the noxious weed management trust fund is terminated by law constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.”

Section 6. Section 80-7-815, MCA, is amended to read:

“80-7-815. Noxious weed emergency—~~expenditure authorized.~~ (1) The governor may declare a noxious weed emergency if:

(a) a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department; or

(b) the state is facing a potential influx of noxious weeds as the result of a natural disaster.

(2) In the absence of necessary funding from other sources, ~~this declaration authorizes the department to allocate up to \$150,000 of the principal of the noxious weed management trust fund~~ *may be appropriated as provided in 80-7-814* to government agencies for emergency relief to eradicate or confine the new noxious weed species or to protect the state from an influx of noxious weeds due to a natural disaster.

~~(3) If the expenditure causes the principal of the trust fund to fall below \$2.5 million, it must be replenished by the interest or revenue generated by the trust fund or by the other revenue provided by this part, as determined by the department.”~~

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5(2)(d)] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 473

[HB 288]

AN ACT PROVIDING FOR THE DEPARTMENT OF CORRECTIONS INSTEAD OF THE CLERKS OF COURT TO COLLECT FEES CHARGED FOR SUPERVISION BY THE DEPARTMENT; AND AMENDING SECTIONS 45-9-202 AND 46-23-1031, MCA.

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

Section 1. Section 45-9-202, MCA, is amended to read:

“45-9-202. Alternative sentencing authority. (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or \$1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of corrections based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in

supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the clerk of the district court ~~department of corrections~~ of not less than \$50 per a month to be deposited in ~~an~~ the account in the state special revenue fund to the credit of the department of ~~corrections established in 46-23-1031;~~

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years."

Section 2. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection (1)(b), a probationer, parolee, or person committed to the department who is supervised by the department under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision ~~department~~ a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision. A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

(b) The court, department, or board may reduce or waive a fee required by subsection (1)(a) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

(b) ~~Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district court clerks~~ *The department* shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) ~~as specified by the supreme court administrator.~~

Section 3. Coordination instruction. If Senate Bill No. 207 and [this act] are both passed and approved, then [section 8] of Senate Bill No. 207 is amended as follows:

“NEW SECTION. Section 8. Effective date dates. (1) [This act] Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Section 6] is effective October 1, 2005.”

Approved April 28, 2005

CHAPTER NO. 474

[HB 327]

AN ACT REVISING SILICOSIS BENEFITS; APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY \$50 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AMENDING SECTIONS 39-73-101, 39-73-103, 39-73-104, 39-73-107, AND 39-73-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-73-101, MCA, is amended to read:

“39-73-101. Definitions. (1) “Examining board” ~~shall mean~~ *means* a well-qualified physician or physicians, as designated by the department of labor and industry.

(2) The term “gainful occupation” ~~as used herein, shall~~ *may* not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but ~~shall mean~~ *means* any person having an income from any other source exceeding ~~\$150~~ *\$300* per month.

(3) “Payments” means money payments to persons having silicosis ~~as herein defined.~~

(4) “Silicosis” means a fibrotic condition of the lungs due to the inhalation of silica dust.”

Section 2. Section 39-73-103, MCA, is amended to read:

“39-73-103. Conformity with acts of federal government. If the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, the department of labor and industry is authorized to administer the grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter may not exceed ~~\$250~~ *\$300* a month, exclusive of any grants made by congress.”

Section 3. Section 39-73-104, MCA, is amended to read:

“39-73-104. Eligibility requirements for benefits. Payment ~~shall~~ *must* be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, ~~which that~~ results in ~~his the~~ *the person's* total disability so as to render it impossible for ~~him the person~~ to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which ~~he the person~~ would receive a payment under this chapter, compensation under ~~The the~~ *the* Occupational Disease Act of Montana, as provided by chapter 72 of this title, ~~which will equal to~~ the sum of ~~\$200 \$300.~~”

Section 4. Section 39-73-107, MCA, is amended to read:

“39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis must be granted a payment by the department of ~~\$250 \$300~~ a month, subject to any additional appropriations. If the person is receiving payments under the Occupational Disease Act of Montana, as provided by chapter 72 of this title, that are less in the aggregate than ~~\$200 \$300~~, then the person is entitled to a payment under this chapter of the difference between the amount received under the Occupational Disease Act of Montana, as provided by chapter 72 of this title, and ~~\$250 \$300~~ a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section.”

Section 5. Section 39-73-109, MCA, is amended to read:

“39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as the spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) but whose spouse died prior to March 14, 1974, is eligible to begin receiving ~~\$150 \$300~~ a month. ~~However, a person is not eligible for these payments if the spouse's taxable income is \$6,800 or more a year.~~”

Section 6. Appropriation. The following money is appropriated from the general fund to the department of labor and industry to fund an increase of \$50 a month for each individual who receives silicosis benefits:

Fiscal year 2006	\$27,000
Fiscal year 2007	27,000

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 475

[HB 331]

AN ACT PROVIDING FOR MEDICAL MALPRACTICE INSURANCE WHEN THE INSURANCE IS NOT REASONABLY AVAILABLE; CREATING AN

ASSOCIATION CONSISTING OF CERTAIN CASUALTY INSURERS TO PROVIDE THE INSURANCE; PROVIDING A PROCESS FOR DETERMINING AVAILABILITY OF MEDICAL MALPRACTICE INSURANCE; CREATING A STABILIZATION RESERVE FUND; AND AMENDING SECTION 33-11-105, MCA.

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

Section 1. Purpose. The legislature finds that if a crisis exists because of the potential unavailability of medical malpractice insurance caused by carrier withdrawals from the Montana market, carrier insolvency, underwriting practices of existing carriers, high cost, and other reasons not attributable to neglect, oversight, or willfulness of a prospective policyholder, alternative programs should be employed to help ensure that medical malpractice insurance remains available to Montana health care providers and health care facilities. The purpose of [sections 1 through 20] is to provide a solution to the unavailability of medical malpractice insurance. Although [sections 1 through 20] will not resolve the underlying causes of unavailability and high cost, which extend beyond the insurance mechanism, it is anticipated that future legislation will deal on a more permanent basis with the root causes of the current crisis.

Section 2. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Association" means the joint underwriting association established pursuant to the provisions of [sections 1 through 20].

(2) "Committee" means a committee designated by the commissioner to coordinate the activities of the market assistance plan and composed of licensed insurance producers, insurers authorized to sell medical malpractice insurance in this state, and eligible surplus lines insurers.

(3) "Health care provider" has the meaning provided in 27-6-103.

(4) "Market assistance plan" means a voluntary mechanism operated by a committee to assist health care providers and health care facilities to buy medical malpractice insurance when medical malpractice insurance is not reasonably available in the voluntary market.

(5) "Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death of or injury to any person as the result of negligence in rendering professional service by a health care provider.

(6) "Net direct premiums" means gross direct premiums on casualty insurance, excluding premiums written by a risk retention group as defined in 33-11-102, written pursuant to the provisions of the insurance laws of Montana, including the liability component of multiple-peril package policies as computed by the commissioner, less return premiums or the unused or unabsorbed portions of premium deposits.

(7) "Voluntary market" means insurers authorized to write medical malpractice insurance in this state, captive insurers authorized to write medical malpractice insurance in this state, and eligible surplus lines insurers, if approved by the commissioner based on financial stability of the surplus lines insurer and the cost and coverage of the medical malpractice policies available from the surplus lines insurers.

Section 3. Market review. (1) After providing notice to all insurers eligible to sell medical malpractice insurance in this state, including eligible surplus lines insurers, the commissioner shall perform a market review to determine the availability of medical malpractice insurance before implementing a market assistance plan under [section 4] or a joint underwriting association under [section 5].

(2) The commissioner shall compile a list of insurers in the voluntary market.

(3) After holding a hearing, the commissioner shall determine whether medical malpractice insurance is reasonably available pursuant to subsection (4) for:

- (a) health care providers, other than health care facilities; or
- (b) health care facilities.

(4) In determining whether medical malpractice insurance is reasonably available, the commissioner shall consider whether:

(a) there is a significant likelihood of a lack of available health care services to the public because of the cost or unavailability of medical malpractice insurance;

(b) a significant portion of the members of a class of health care providers:

(i) cannot obtain medical malpractice insurance from medical malpractice insurers for reasons not attributable to negligence, neglect, oversight, or willfulness of the health care providers; or

(ii) is uninsured as a result of new underwriting restrictions unrelated to the acts or omissions of the health care providers or because of the insolvency of a medical malpractice insurer.

Section 4. Market assistance plan. (1) If the commissioner determines under [section 3] that medical malpractice insurance is not reasonably available, the commissioner shall attempt to form a market assistance plan for medical malpractice insurance before implementing a joint underwriting association under [section 5].

(2) The commissioner may establish a market assistance plan only if the commissioner determines that there exists a sufficient number of insurers in the voluntary market willing to underwrite standard risks at adequate coverage limits.

(3) If an insurer in the voluntary market declines to participate in the market assistance plan, the insurer shall state both the business and the financial reasons for not participating in the market assistance plan.

(4) The commissioner, in consultation with the committee, shall develop a plan of operation for the market assistance plan.

(5) The market assistance plan may include a reasonable processing fee to applicants that seek medical malpractice insurance coverage through the market assistance plan.

(6) Licensed insurance producers may receive a reasonable commission for medical malpractice insurance placed in the market assistance plan. The plan of operation may allow a commission to be paid regardless of whether the producer is appointed or otherwise represents the insurer accepting the risk.

Section 5. Joint underwriting association. (1) A joint underwriting association is created, consisting of all insurers authorized to write or engaged in writing casualty insurance within this state, including insurers writing multiple-peril package policies but excluding risk retention groups. Each insurer shall remain a member of the association as a condition of the insurer's authority to continue to write casualty insurance in this state. The purpose of the association is to provide medical malpractice insurance on a self-supporting basis.

(2) The association may not commence underwriting operations for health care providers, other than health care facilities, until the commissioner has conducted a market review under [section 3], determined that medical malpractice insurance is not reasonably available for health care providers, other than health care facilities, in the voluntary market, and attempted to establish a market assistance plan. Upon the commissioner determining that the market assistance plan has not achieved reasonably available medical malpractice insurance, the commissioner shall notify the association that it may issue policies of medical malpractice insurance to health care providers, other than health care facilities. The association need not be the exclusive agency through which medical malpractice insurance may be written in this state on a primary basis for health care providers, other than health care facilities.

(3) The association may not commence underwriting operations for health care facilities until the commissioner has conducted a market review under [section 3], determined that medical malpractice insurance is not reasonably available for those facilities in the voluntary market, and attempted to establish a market assistance plan. Upon the commissioner determining that the market assistance plan has not achieved reasonably available medical malpractice insurance, the commissioner shall notify the association that it may issue policies of medical malpractice insurance to health care facilities. The association need not be the exclusive agency through which medical malpractice insurance may be written in this state on a primary basis.

(4) If the commissioner determines at any time that medical malpractice insurance is reasonably available in the voluntary market for the health care providers referred to in either subsection (2) or (3), the association shall cease its underwriting operations for the medical malpractice insurance that the commissioner has determined is reasonably available in the voluntary market.

(5) The association may operate for a period of 3 years. At the end of the 3-year period, the association must be dissolved unless the commissioner, after notice and a hearing, reauthorizes the operations of the association. If the commissioner determines that adequate medical malpractice insurance is available in the voluntary market, the commissioner shall order the association to end its underwriting operations and shall supervise the dissolution of the association, including settlement of all financial and legal obligations and distribution of any remaining assets.

Section 6. Authority to issue policies. The association may:

(1) subject to limits specified in the association's plan of operation, but not to exceed \$2 million for each claimant under one policy and \$4 million for all claimants under one policy in any 1 year, issue or cause to be issued policies of medical malpractice insurance to applicants, including incidental coverages;

(2) underwrite the medical malpractice insurance and assume reinsurance from its members; and

(3) cede reinsurance.

Section 7. Plan of operation — submission — amendment. (1) Within 45 days after the creation of the association, the board of directors of the association shall submit to the commissioner for the commissioner's review a proposed plan of operation consistent with the provisions of [sections 1 through 20]. The plan is effective upon order of the commissioner.

(2) The plan of operation must provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical malpractice insurance. The plan must contain a preliminary assessment against all members for initial expenses necessary to commence operations and establish necessary facilities and an annual assessment against all members for the costs of managing the association, losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of medical malpractice insurance to be provided by the association.

(3) The plan of operation must provide that the premium for all policyholders of the association, as a group, must be equal to the administrative expenses, loss, loss adjustment expenses, and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders must be given full credit for all association investment income, after deduction of association expenses and a reasonable management fee, on policyholder premiums.

(4) Amendments to the plan of operation may be made by the board of directors of the association, subject to the approval of the commissioner.

Section 8. Application for coverage. (1) After a determination of unavailability is made under [section 5(2) or (3)], a health care provider may apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and that there is no unpaid, uncontested premium due from the applicant for prior medical malpractice insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days after billing, then the association, upon receipt of the premium or the portion of the premium that is prescribed in the plan of operation, shall issue a policy of medical malpractice insurance for a term of 1 year.

Section 9. Rates — approval. (1) The rates, rating plans, rating rules, rating classifications, territories, policy forms applicable to the medical malpractice insurance written by the association, and related statistics pursuant to 33-1-501, 33-1-502, and Title 33, chapter 16, must give consideration to the past and prospective loss and expense experience for medical malpractice insurance of the association, trends in the frequency and severity of losses, the investment income of the association, and other information that the commissioner may require.

(2) Within the time directed by the commissioner, the association shall submit an initial filing of policy forms, classifications, rates, rating plans, and rating rules applicable to medical malpractice insurance to be written by the association pursuant to 33-1-501, 33-1-502, and Title 33, chapter 16.

(3) After the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through member assessment or a premium rate increase must be based upon the association's loss and expense experience,

together with other information based upon that experience that the commissioner considers appropriate. Any resulting member assessment or a premium rate increase must be on an actuarially sound basis and be calculated to make the association self-supporting.

Section 10. Recoupment of deficit and member assessments. (1) (a) If the association experiences an underwriting deficit for any year, the deficit must be recouped as provided in the plan of operation and the rating plan must contain the procedures provided for in subsections (1)(b) and (1)(c).

(b) The board of directors shall certify the underwriting deficit to the commissioner. The certification is subject to the review of the commissioner.

(c) After review of the certification, the deficit must be recouped by:

(i) first, reimbursement of the deficit in the following order:

(A) from the stabilization reserve fund, as provided in [section 11];

(B) a premium contingency assessment on the association's policyholders, as provided in [section 12], if the reimbursement in subsection (1)(c)(i)(A) is insufficient; and

(C) an assessment upon the members, as provided in [section 15], if the reimbursement in subsections (1)(c)(i)(A) and (1)(c)(i)(B) is insufficient; and

(ii) second, a premium rate increase on the association's policyholders applicable prospectively, as provided in [section 9].

(2) Reimbursements from the stabilization reserve fund and premium contingency assessments imposed under this section and premiums collected under [sections 9 and 16] and subsection (1)(c)(ii) of this section must be sufficient to recoup all expenses of the association and to reimburse the members for all assessments imposed on them by the association.

Section 11. Stabilization reserve fund. (1) The commissioner shall establish a stabilization reserve fund.

(2) (a) Each policyholder shall pay to the association a stabilization reserve fund charge equal to 15% of each premium payment due for insurance through the association. The stabilization reserve fund charge must be stated separately in the policy and is payable with each premium payment. The association shall cancel the policy of any policyholder who fails to pay the premium stabilization reserve fund charge.

(b) The stabilization reserve fund charge does not constitute a part of the premium and is not subject to premium taxation, servicing fees, acquisition costs, commissions, or any other charges. The stabilization reserve fund charge may not be considered a premium for the purpose of any assessments levied under [section 15].

(3) (a) The association shall collect and administer the stabilization reserve fund charge. The stabilization reserve fund charge must be treated as a liability of the association along with and in the same manner as premium and loss reserves.

(b) All money received by the stabilization reserve fund must be held in trust by a corporate trustee selected by the association. The corporate trustee may invest the money held in trust, subject to the approval of the association. All investment income must be credited to the stabilization reserve fund. All expenses of administration of the stabilization reserve fund must be charged against the fund. The money held in trust may be used only for the purpose of

recoupment of any deficit sustained by the association, as provided in [section 10].

(c) Collections of the stabilization reserve fund charge continue throughout each calendar year for which the fund is established. However, a charge may not be assessed:

(i) during the next succeeding calendar year if the net balance in the stabilization reserve fund after recoupment of any prior year's deficit equals or exceeds the association's estimate of the projected sum of premiums to be written in the calendar year following the valuation date of the fund; or

(ii) in any year in which a premium contingency assessment is collected, as provided in [section 12].

(4) The stabilization reserve fund charge is not refundable if the policy is canceled after the 90th day of coverage.

(5) Upon dissolution of the association as provided in [section 5(5)], the commissioner shall order that any funds remaining in the stabilization reserve fund be reimbursed to the policyholders in proportion to the amounts of the stabilization reserve fund charges paid by the policyholders.

Section 12. Premium contingency assessment to cover deficit. (1) If the association suffers an underwriting deficit for any year and recoupment of the underwriting deficit by reimbursement, as provided in [section 10(1)(c)(i)(A)], is insufficient, each association policyholder shall pay to the association a premium contingency assessment as provided in the plan of operation. The assessment must bear the same ratio to the amount of the deficit as the policyholder's premium for the year for medical malpractice insurance written or reinsured by the association bore to the total premiums paid to the association for the year. The association may cancel any policy of any policyholder who fails to pay the premium contingency assessment and need not defend or pay any future claims against that policyholder. A deficit premium contingency assessment that cannot be collected from a policyholder may not be assessed against any other policyholder.

(2) The association shall amend the amount of its certification of deficit to the commissioner as the value of its incurred losses becomes finalized, and the association, may amend its recoupment procedure accordingly.

(3) The board of directors may require all members to contribute on a temporary basis to the financial requirements of the association prior to recoupment of any deficit in the proportion specified in the plan.

(4) The association may not collect stabilization reserve assessments, as provided in [section 11], in any year in which premium contingency assessments are collected under this section.

Section 13. Claims-made policies. The association shall offer policies on a claims-made basis. The premiums charged for claims-made policies must be established on an actuarially sound basis and as provided in Title 33, chapter 16.

Section 14. Risk management. (1) The association shall establish a risk management program for persons or entities insured by the association.

(2) The risk management program must include:

(a) standards for systematic investigation and reporting of claims and incidents; and

(b) a loss control program. The loss control program must include procedures for:

- (i) analysis of claim frequency, severity, and causes of loss;
- (ii) identification of situations that may produce large losses;
- (iii) development of measures to control losses;
- (iv) monitoring of the effectiveness of the loss control measures that are implemented; and
- (v) education of insured health care providers and health care facilities on methods to reduce or prevent losses.

(3) The commissioner shall appoint an advisory council consisting of three health care providers and three professional insurance risk managers to provide advice to the association on risk management activities.

Section 15. Financial participation by association members. (1) Each member of the association shall participate in the association's medical malpractice insurance policies, expenses, profits, and losses in the proportion that the net direct premiums of the member during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bears to the aggregate net direct premiums of all members of the association.

(2) Each member's participation in the association must be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner.

(3) A member is not obligated to reimburse the association for the member's proportionate share in a deficit from operations of the association in any calendar year in an amount greater than 1% of the member's net direct written premium for the preceding calendar year on policies written in this state for casualty insurance. The aggregate amount not reimbursed must be reallocated among the remaining members in accordance with the method of determining participation after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. If the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of the member's net direct written premium for the preceding calendar year on policies written in this state for casualty insurance, the amount of the deficit must be allocated to each member in accordance with the method of determining participation. A member may not be assessed an amount that would jeopardize that member's solvency.

Section 16. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which [sections 1 through 20] apply must include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member less any amounts returned to the member by the association, and these rates may not be considered excessive because they contain an amount reasonably calculated to recoup assessments paid by the member.

Section 17. Directors. The association must be governed by an annually elected board of directors. Eight directors must be elected by cumulative voting of members of the association, whose votes must be weighted in the proportion that a member's net direct premiums during the preceding calendar year bears to the net direct premiums of all the members during the preceding calendar

year. Three directors must be appointed by the commissioner as representatives of the medical profession, and the appointments must be made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association must be elected at a meeting of the members held at a time and place designated by the commissioner.

Section 18. Appeals and judicial review. For matters that the law or the plan of operation defines as appealable, an applicant for medical malpractice insurance, insured health care provider or health care facility, or association member may appeal to the commissioner within 30 days after a decision by or on behalf of the association. An order of the commissioner is subject to judicial review as provided in Title 33.

Section 19. Annual statements. The association shall file in the office of the commissioner on or before March 1 of each year a statement containing information with respect to the association's transactions, condition, operations, and affairs during the preceding calendar year. The statement must contain the matters and information and be in the format prescribed by the commissioner. The commissioner may at that time require the association to furnish additional information that the commissioner believes to be material and of assistance in evaluating the scope, operation, and experience of the association.

Section 20. Examination of association's affairs. The commissioner shall examine the affairs of the association at least annually.

Section 21. Section 33-11-105, MCA, is amended to read:

"33-11-105. Compulsory associations. (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any guaranty fund for claims arising out of the operations of the risk retention group.

(2) (a) ~~Except as provided in subsection (2)(b),~~ a risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms.

(b) *A risk retention group is excluded from participating in the joint underwriting association provided for in [section 5] and related financing mechanisms.*

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund, subject to Title 33, chapter 10, part 1."

Section 22. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 33, chapter 23, and the provisions of Title 33 apply to [sections 1 through 20].

Approved April 28, 2005

CHAPTER NO. 476

[HB 351]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO EXPLAIN THE REQUIREMENTS OF FIXING VALUES OF IMPROVEMENTS BY ARBITRATION; REQUIRING A LESSEE TO PROVIDE A LIST OF IMPROVEMENTS AND THEIR REASONABLE VALUE PRIOR TO RENEWAL OF A LEASE AND REQUIRING THAT THE INFORMATION BE PROVIDED TO A PARTY REQUESTING TO BID ON THE LEASE; CHANGING COURT VENUE FOR CONTESTING VALUES; AMENDING SECTIONS 77-6-302 AND 77-6-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 77-6-302, MCA, is amended to read:

“77-6-302. Compensation for improvements — actual costs. (1) *Prior to renewal of a lease, the department shall request from the lessee a listing of improvements on the land associated with the lease, including the reasonable value of the improvements. This information must be provided to any party requesting to bid on the lease. When another person becomes the lessee of the lands, the person shall pay to the former lessee the reasonable value of the improvements. The reasonable value may not be less than the full market value of the improvements.*

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306. The former lessee shall initiate this process within 60 days of notification from the department that there is a new lessee. *The department notification must include an explanation of the requirements of 77-6-306. Failure to initiate the process within this time period results in all improvements becoming the property of the state.*

(3) Upon the termination of a lease, the department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.”

Section 2. Section 77-6-306, MCA, is amended to read:

“77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two appointed arbitrators. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department. The department shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision for judicial review of the decision."

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

Approved April 28, 2005

CHAPTER NO. 477

[HB 374]

AN ACT INCREASING THE INCARCERATION AND FINE THAT MAY BE IMPOSED ON A PERSON FOR A FIRST THROUGH THIRD CONVICTION OF DRIVING WHILE UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA.

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) 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 and ~~shall be punished~~ 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 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 ~~in the county jail~~ 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) 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, *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. At least 48 hours of the imprisonment term must be served and served consecutively in the county jail 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) 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 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 in the county jail 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.*

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) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and ~~shall be punished~~ 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 and by a fine of not less than \$600 or more than \$2,000.*

(2) 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 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 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) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest, or more than 6 months 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 days, which may not be served on home arrest, or more than 12 months 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.”

Approved April 28, 2005

CHAPTER NO. 478

[HB 385]

AN ACT REVISING THE LAW RELATING TO DRIVER'S LICENSE ELIGIBILITY; PROHIBITING THE ISSUANCE OF A LICENSE TO A PERSON WHO CANNOT PROVE THAT THE PERSON'S PRESENCE IN THE UNITED STATES IS AUTHORIZED UNDER FEDERAL LAW; PROVIDING FOR ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL WHOSE PRESENCE IN THE UNITED STATES IS TEMPORARILY AUTHORIZED UNDER FEDERAL LAW AND IMPOSING CERTAIN CONDITIONS ON RENEWAL AND EXPIRATION OF THAT LICENSE; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES REGARDING ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL; AMENDING SECTIONS 61-5-105, 61-5-107, 61-5-111, AND 61-5-125, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

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)~~(1) who is under 16 years of age unless:

~~(a)~~(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)~~(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)~~(2) whose license or driving privilege is currently suspended or revoked 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)~~(3) who is addicted to the use of alcohol or narcotic drugs;

~~(4)~~(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)~~(5) who is required by this chapter to take an examination;

~~(6)~~(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

~~(7)~~(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 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; or

~~(8)~~(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway; or

(9) who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. The department may not accept as a primary source of identification a driver's license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law."

Section 2. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any 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~~

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions; *and*

(e) if the applicant is a foreign national whose presence in the United States is temporarily authorized under federal law, the expiration date of the official document issued to the applicant by the bureau of citizenship and immigration services of the department of homeland security authorizing the applicant's presence in the United States.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's

driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 3. Section 61-5-111, MCA, is amended to read:

“61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses 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.

(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, 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 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.*

(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 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) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(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. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b), ~~and~~ (4)(c), and (4)(d), 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) *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) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be

suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — \$5 a year or fraction of a year;

(ii) intrastate — \$3.50 a year or fraction of a year;

(d) renewal notice — 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 4. Section 61-5-125, MCA, is amended to read:

"61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

(b) issuance of a hardship license to an underage applicant;

(c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

(d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

(e) restrictions to be imposed upon a probationary license;

(f) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty; ~~and~~

(g) issuance of a duplicate driver's license; *and*

(h) *a determination of the driver's license expiration date, minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law.*"

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Sections 2 and 3] are effective July 1, 2006.

Section 6. Applicability. [This act] applies to driver's licenses issued on or after July 1, 2005, and to driver's licenses renewed on or after July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 479

[HB 386]

AN ACT ESTABLISHING QUALIFICATIONS FOR AN INDIVIDUAL APPOINTED AS THE COMMISSIONER OF POLITICAL PRACTICES; ESTABLISHING RESTRICTIONS ON THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING DEFINITIONS THAT APPLY TO THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THAT A GOVERNOR WHO REMOVES A COMMISSIONER OF POLITICAL PRACTICES FROM OFFICE STATE THE REASONS FOR REMOVAL IN WRITING; ELIMINATING THE PERIOD DURING WHICH AN INDIVIDUAL WHO SERVED AS COMMISSIONER OF POLITICAL PRACTICES WAS RESTRICTED FROM BECOMING A CANDIDATE FOR PUBLIC OFFICE; IDENTIFYING CONDITIONS REGARDING THE RECUSAL OF THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THE APPOINTMENT OF AND SETTING THE

QUALIFICATIONS FOR A DEPUTY TO SERVE WHEN THE COMMISSIONER OF POLITICAL PRACTICES IS RECUSED; AND AMENDING SECTIONS 13-27-111, 13-37-101, 13-37-102, 13-37-103, AND 13-37-111, MCA.

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

Section 1. Commissioner of political practices — qualifications. The individual appointed to serve as commissioner:

- (1) must be a citizen of the United States and a resident of Montana as provided in 13-1-112; and
- (2) on the date of appointment, must be registered to vote in Montana.

Section 2. Commissioner of political practices — restrictions. During the commissioner's term of office, the commissioner may not knowingly, as defined in 45-2-101:

- (1) hold another position of public trust or engage in any other occupation or business if the position of public trust or the other occupation or business interferes with or is inconsistent with the commissioner executing the duties of the commissioner's office;
- (2) participate in any political activity or in a political campaign;
- (3) make a contribution to a candidate or political committee or for or against a ballot issue or engage in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;
- (4) attend an event that is held for the purpose of raising funds for or against a candidate, political committee, or ballot issue;
- (5) participate in a matter pertaining to the commissioner's office that:
 - (a) is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest pursuant to Title 2, chapter 2; or
 - (b) involves a relative of the commissioner.

Section 3. Section 13-27-111, MCA, is amended to read:

"13-27-111. Definitions. As used in 13-27-112, 13-27-113, and this section, unless otherwise indicated by the context, the following definitions apply:

- (1) "Commissioner" means the commissioner of political practices provided for in ~~13-37-101~~ 13-37-102.
- (2) "Paid signature gatherer" means a signature gatherer who is compensated in money for the collection of signatures.
- (3) "Person" has the meaning provided in 13-1-101, but does not include a candidate and includes a political committee.
- (4) "Signature gatherer" means an individual who collects signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention."

Section 4. Section 13-37-101, MCA, is amended to read:

"13-37-101. Commissioner of political practices Definitions. ~~In~~ As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) ~~"commissioner"~~ "Commissioner" means the commissioner of political practices created by 13-37-102, ~~unless the context clearly indicates otherwise.~~

(2) "Public office" has the meaning provided in 13-1-101.

(3) "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.

(4) "Relative" means a family member who is within the second degree of consanguinity or affinity to the commissioner."

Section 5. Section 13-37-102, MCA, is amended to read:

"13-37-102. Creation of office — removal. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee ~~comprised~~ *composed* of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for ~~his~~ *the governor's* consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner of political practices may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. *The governor's decision to remove the commissioner must be stated in writing, and the sufficiency of such the governor's stated causes shall be for removing the commissioner is subject to judicial review.*"

Section 6. Section 13-37-103, MCA, is amended to read:

"13-37-103. Term of office — limitations on holding other office. (1) ~~The~~ *Subject to the provisions of 13-37-104, the* individual selected to serve as ~~the~~ commissioner of political practices is appointed for a 6-year term, ~~but he is thereafter ineligible and may not be reappointed to serve as the commissioner of political practices.~~

(2) ~~The individual selected to serve as commissioner of political practices is precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 years from the time that he leaves office as commissioner.~~"

Section 7. Section 13-37-111, MCA, is amended to read:

"13-37-111. Investigative powers and duties — recusal. (1) The commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

~~(3)~~(b) ~~The commissioner may~~ inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter ~~which~~ *that* are held by any political committee or candidate, as long as the inspection is made during reasonable office hours; *and*

~~(4)(c) The commissioner may~~ administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records ~~which that~~ are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

(4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy, subject to subsection (4)(b).

(b) The deputy:

(i) may not be an employee of the office of the commissioner;

(ii) must have the same qualifications as specified for the commissioner in [section 1];

(iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and

(iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

(5) The appointment of the deputy is effectuated by a contract between the commissioner and the deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties."

Section 8. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 13, chapter 37, part 1, and the provisions of Title 13, chapter 37, part 1, apply to [sections 1 and 2].

Approved April 28, 2005

CHAPTER NO. 480

[HB 395]

AN ACT PROVIDING THAT A PRIVATE INSURER OR PUBLIC ASSISTANCE PROGRAM IS RESPONSIBLE FOR THE COSTS OF PRECOMMITMENT DETENTION, EXAMINATION, AND TREATMENT OF A RESPONDENT IN A MENTAL HEALTH COMMITMENT PROCEEDING BEFORE THE COUNTY OF RESIDENCE IS RESPONSIBLE FOR THOSE COSTS; AMENDING SECTION 53-21-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) The cost of ~~precommitment examination, detention, treatment, and psychiatric precommitment examination, detention, treatment, and~~ taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid by the county in which the person resides at the time

~~that the person is committed pursuant to subsection (2)(a).~~ The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

~~(2) (a) The county of residence shall also pay all~~ *The costs of precommitment expenses, including transportation to a mental health facility, incurred in connection with the psychiatric detention, precommitment psychiatric examination, and precommitment custody psychiatric treatment of the respondent and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123 must be billed to the following entities in the listed order of priority:*

(i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private insurance carrier, if any;

(ii) a public assistance program, such as medicaid, for a qualifying respondent; or

(iii) the county of residence of the respondent in an amount not to exceed the amount paid for the service by a public assistance program.

~~(b) However, the~~ *The county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.*

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."

Section 2. Cost study. The department of public health and human services shall work with county attorneys and county commissioners to ascertain the actual precommitment costs of involuntary commitments and present that information and any findings and recommendations to the 2007 legislature through an appropriate interim committee.

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 481

[HB 411]

AN ACT CLARIFYING THAT TOBACCO TAX REVENUE DEDICATED TO SUPPORT THE OPERATION AND MAINTENANCE OF VETERANS' HOMES IS RESTRICTED TO THAT USE; AMENDING SECTION 10-2-417, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-2-417, MCA, is amended to read:

“10-2-417. Use of funds generated by taxation on cigarettes. (1) Revenue generated by 16-11-119 and allocated to the department of public health and human services *for veterans’ homes* must be used to support the operation and maintenance of the Montana veterans’ homes programs ~~or for the health and medicaid initiatives specified by 53-6-1201.~~

(2) The legislature shall appropriate from the account established in 16-11-119(1)(a) the funds required for the operation and maintenance of the Montana veterans’ homes ~~or required for the health and medicaid initiatives specified by 53-6-1201.~~”

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

Approved April 28, 2005

CHAPTER NO. 482

[HB 414]

AN ACT ESTABLISHING A YOUTH INTERVENTION AND PREVENTION ACCOUNT TO BE USED FOR THE YOUTH COURT INTERVENTION AND PREVENTION PROGRAMS; PROVIDING FOR FUND TRANSFERS TO THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 41-5-130, 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. Youth court intervention and prevention account — statutory appropriation — administration. (1) There is a youth intervention and prevention account in the state special revenue fund. The money in the account must be used for the youth court intervention and prevention programs authorized in Title 41, chapter 5, part 20. All unexpended funds remaining at the end of a fiscal year in the accounts established under 41-5-130(6) must be transferred to the account established in this subsection.

(2) The youth intervention and prevention account is statutorily appropriated, as provided in 17-7-502, to the supreme court for the purposes of 41-5-2003(3). The office of the court administrator shall administer the account in accordance with rules adopted by the department of corrections.

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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; *[section 1]*; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 3. Section 41-5-130, MCA, is amended to read:

"41-5-130. Participating and nonparticipating jurisdictions. (1) Each judicial district may elect to participate in the juvenile delinquency intervention program.

(2) A jurisdiction that elects to participate in the program may expend funds from a juvenile placement fund for out-of-home placements or for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department.

(3) A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.

(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.

(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.

(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements *and for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department. At the end of a fiscal year, the balance in the accounts established under this subsection must be transferred to the youth intervention and prevention account established in [section 1].*"

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, part 20, and the provisions of Title 41, chapter 5, part 20, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to unexpended funds in the accounts established under 41-5-130(6) on June 30, 2004.

Approved April 28, 2005

CHAPTER NO. 483

[HB 418]

AN ACT CLARIFYING THE DEFINITION OF "SUPERVISORY EMPLOYEE" IN THE CONTEXT OF COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES; AMENDING SECTION 39-31-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

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

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) (a) "Public employee" means:

(i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (11);

(iv) a management official, as defined in subsection (7);

(v) a confidential employee, as defined in subsection (3);

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer intern.

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(11) (a) ~~"Supervisory employee" means any an individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.~~

having the authority on a regular, recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(b) The authority described in subsection (11)(a) is the only criteria that may be used to determine if an employee is a supervisory employee. The use of any

other criteria, including any secondary test developed or applied by the national labor relations board or the Montana board of personnel appeals, may not be used to determine if an employee is a supervisory employee under this section.

(12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402."

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

Approved April 28, 2005

CHAPTER NO. 484

[HB 421]

AN ACT ALLOWING A QUALIFIED NONRESIDENT CHILD OF A RESIDENT TO PURCHASE CERTAIN NONRESIDENT HUNTING AND FISHING LICENSES AT A REDUCED RATE; CREATING A CLASS B-15 NONRESIDENT CHILD'S ELK LICENSE FOR USE ONLY BY A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; ESTABLISHING THE CONDITIONS AND RATE OF THE LICENSES AVAILABLE TO A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Nonresident child of resident allowed to purchase nonresident licenses at reduced cost. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is the natural or adopted child of a resident, as defined in 87-2-102, and who meets the qualifications of subsection (3) may purchase a Class B nonresident fishing license, a Class B-1 nonresident upland game bird license, and a Class B-7 nonresident deer A tag at the reduced cost specified in subsection (2) and may purchase a Class B-15 nonresident child's elk license as provided in [section 2]. This section does not allow a nonresident child of a resident to purchase nonresident combination licenses at a reduced price.

(2) The fee for a nonresident license purchased pursuant to subsection (1) is twice the amount charged for an equivalent resident license. The nonresident child shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 [and pay the nonresident hunting access enhancement fee in 87-2-202(3)(d) if the nonresident child purchases a hunting license].

(3) To qualify for a license pursuant to subsection (1), a nonresident child of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana;

(b) a high school diploma from a Montana public, private, or home school or certified verification that the applicant has passed the general education development test in Montana; and

(c) proof that the applicant has a natural or adoptive parent who is a current Montana resident, as defined in 87-2-102.

(4) A qualified nonresident child of a resident may purchase licenses pursuant to subsection (1) for up to 6 license years after receiving a diploma or passing the general education development test as provided in subsection (3)(b).

(5) A nonresident child of a resident who has been issued a hunting license pursuant to this section is not eligible to apply for or be issued any nonresident special permit.

(6) A nonresident child of a resident who has been issued a hunting license pursuant to this section must be accompanied by a licensed resident family member while hunting in the field.

Section 2. Class B-15 nonresident child's elk license. (1) Except as otherwise provided in this chapter, a nonresident child of a resident who is qualified to purchase licenses pursuant to [section 1] may purchase a Class B-15 nonresident child elk license for twice the amount charged for a resident Class A-5 elk tag.

(2) A Class B-15 license entitles the holder to hunt elk in areas designated by the commission, at the times and upon the terms set forth by the commission, and to possess the carcass of an elk authorized by the license as set forth in department rules.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [sections 1 and 2].

Section 4. Coordination instruction. If Senate Bill No. 77 is not passed and approved, then the bracketed language in [section 1(2) of this act] is void.

Section 5. Effective date. [This act] is effective March 1, 2006.

Approved April 28, 2005

CHAPTER NO. 485

[HB 423]

AN ACT APPROPRIATING \$500,000 FROM THE STATE GENERAL FUND TO BE USED BY THE DEPARTMENT OF COMMERCE TO PROVIDE FUNDING FOR THE ACQUISITION OF LAND AND THE CONSTRUCTION OF A FACILITY FOR CREATION OF THE GREAT PLAINS DINOSAUR PARK IN MALTA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, because of their relatively remote locations, northeastern Montana communities are uniquely challenged when it comes to attracting tourists and promoting economic development; and

WHEREAS, the Great Plains Dinosaur Park will showcase the paleontological treasures that have been found in northeastern Montana; and

WHEREAS, currently, there is no facility in the area large enough to accommodate the newly discovered dinosaur exhibits; and

WHEREAS, currently, there is no facility in the area large enough to support the growth of the research faculty to a size appropriate for meeting the scientific demands posed by paleontological study; and

WHEREAS, a park of this size may attract tourism into the area, infusing much-needed funds into the local economy; and

WHEREAS, the creation of new jobs may contribute to greater economic vitality in the area.

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

Section 1. Appropriation. There is appropriated \$500,000 from the state general fund to the department of commerce for the biennium beginning July 1, 2005, to purchase the land and purchase or construct a facility for a park in Malta, Montana, to display the products of paleontological research in the area and to provide research facilities for paleontologists and complete necessary building upgrades. The department of commerce may lease the property to a private, nonprofit entity for the purpose of operating the park.

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 486

[HB 428]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING STANDARD PROCEDURES FOR ISSUING AND APPEALING ADMINISTRATIVE ORDERS; PROHIBITING THE DEPARTMENT FROM WAIVING A PENALTY ASSESSED UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IF A PERSON OR OPERATOR FAILS TO ABATE THE VIOLATION IN ACCORDANCE WITH A NOTICE OR ORDER; PROVIDING FOR A WRITTEN RELEASE OF LIABILITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; PROVIDING PENALTIES FOR VIOLATIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AMENDING VENUE PROVISIONS UNDER METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-254, 82-4-361, AND 82-4-441, MCA.

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

Section 1. Section 82-4-254, MCA, is amended to read:

“82-4-254. Violation — penalty — waiver. (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules *adopted* or orders *issued* ~~adopted~~ under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay ~~a civil~~ *an administrative* penalty of not less than \$100 or more than \$5,000 for the violation and an additional ~~civil~~ *administrative* penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which the failure or violation continues. The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the ~~civil~~ penalty for a minor violation of this part, a rule *adopted* or an order *issued* ~~adopted~~ under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. *The department may not waive a penalty assessed under this section if the person or operator fails to abate the violation as directed under 82-4-251.* The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) (a) ~~To assess an administrative penalty under this section, the~~ department shall ~~notify the person or operator of the violation~~ *issue a notice of violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2).* *The notice and order must specify the provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty. The notice and order must be served personally or by certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was issued requests a hearing before the board. By filing* submitting to the board a written request within ~~20~~ 30 days of receipt service of the notice of violation, stating the reason for the request, the person or operator is entitled to a hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. ~~The department shall issue a statement of proposed penalty no more than 10 days after issuing the notice of violation.~~ *On receipt of a request, the board shall schedule a hearing. After a hearing, the board shall make findings of fact, shall and issue a written decision as to the occurrence of the violation and the amount of penalty warranted.* ~~if~~ If the board finds that the violation occurred, ~~the amount of~~ and a penalty is warranted, ~~and~~ it shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request, ~~the department shall make the findings of fact and issue the written decision and order.~~ The person or operator shall remit the amount of the penalty within 30 days of the ~~order expiration of the period for requesting a hearing.~~

(b) If the person or operator *to whom a final order is issued under subsection (3)(a)* wishes to obtain judicial review of the ~~assessment~~ order, the person or operator shall submit with ~~the~~ any assessed penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in ~~this~~ subsection (3)(a) or who fails to pay ~~the~~ any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation ~~or~~ and penalty determinations.

(c) ~~These penalties~~ *Penalties provided for in this section* are recoverable in any action brought in the name of the state of Montana by the attorney general ~~by the department.~~ *The action must be filed* in the district court of the first judicial district, Lewis and Clark County, or the district having jurisdiction over the defendant.

(4) ~~The attorney general shall, upon request of the director of the department, sue for the recovery of the penalties provided for in this section and~~ *department may bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:*

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order ~~adopted~~ *issued* under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) *Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed.*

Section 2. Section 82-4-361, MCA, is amended to read:

“82-4-361. Violation — penalties — waiver. (1) *When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a*

violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

~~(1)~~(2) (a) *By issuance of an order pursuant to subsection (6), the* The department may assess an administrative ~~civil~~ penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative ~~civil~~ penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule *adopted* or an order ~~adopted~~ *issued* under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule *adopted* or an order ~~adopted~~ *issued* under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum *administrative* penalty is \$5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

~~(2)~~(4) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

~~(3)~~(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

~~(4) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after issuing the notice of the violation. The person or operator, by filing a written request stating the reason for the request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing before the board on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted. The board shall order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the~~

~~findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in district court.~~

(6) (a) *In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.*

(b) *An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.*

~~(5)(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the first judicial district, Lewis and Clark County."~~

Section 3. Section 82-4-441, MCA, is amended to read:

"82-4-441. ~~Penalty~~ Administrative and judicial penalties — enforcement. (1) *When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.*

~~(1)(2)~~ (2) *By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:*

(a) ~~a civil~~ *an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and*

(b) ~~an additional civil~~ *an administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues following the service of notice of the violation.*

(3) *The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules*

adopted or orders issued under this part or provisions of a permit, and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

~~(2)~~(4) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

- (a) the nature, circumstances, extent, and gravity of the violation;
- (b) the violator's prior history of violations within the past 3 years;
- (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;
- (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and
- (e) other matters that justice may require to decrease the amount of penalty.

~~(3)~~ The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the open-cut mine is located.

(5) (a) *In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.*

(b) *An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.*

~~(4)~~(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. *Actions for injunctions or penalties must be filed in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the opencut mine is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.*

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

Section 4. Coordination instruction. If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 82-4-441 in both House Bill No. 429 and [this act] are void and 82-4-441 must read as follows:

“82-4-441. Penalty Administrative and judicial penalties — enforcement. *(1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.*

~~(1)~~(2) *By issuance of an order pursuant to subsection (5), the* The department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:

(a) ~~a civil~~ an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional ~~civil~~ administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues ~~following the service of notice of the violation.~~

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit, and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3 of House Bill No. 429].

~~(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

~~(a) the nature, circumstances, extent, and gravity of the violation;~~

~~(b) the violator's prior history of violations within the past 3 years;~~

~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~

~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~

~~(c) other matters that justice may require to decrease the amount of penalty.~~

~~(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the open-cut mine is located.~~

(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

~~(4)(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the open-cut mine is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.~~

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."

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. Contingent voidness. (1) If any portion of [section 1] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [section 1] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Approved April 28, 2005

CHAPTER NO. 487

[HB 429]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING UNIFORM FACTORS FOR DETERMINING PENALTIES AND UNIFORM VENUE FOR PENALTY ACTIONS; AUTHORIZING THE DEPARTMENT TO USE PRIVATE SERVICES TO COLLECT PENALTIES, FEES, LATE FEES, AND INTEREST; REVISING THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE PENALTIES FOR AIR QUALITY VIOLATIONS; AMENDING SECTIONS 75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-6-109, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-10-542, 75-10-1222, 75-10-1223, 75-11-223, 75-11-516, 75-11-525, 75-20-408, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
 - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
 - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
 - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) After the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

Section 2. Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 75 or Title 76, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

Section 3. Penalty factors. (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

Section 4. Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 82, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

Section 5. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement — notice — order for corrective action — administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the

rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than ~~12 months~~ 2 years prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider *the penalty factors in [section 1]:*

~~(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;~~

~~(ii) the alleged violator's full compliance history and good faith efforts to comply;~~

~~(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;~~

~~(iv) payment by the violator of penalties previously assessed for the same violation;~~

~~(v) the economic benefit of noncompliance;~~

~~(vi) the seriousness of the violation; and~~

~~(vii) other matters as justice may require.~~

(e) The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.”

Section 6. Section 75-2-413, MCA, is amended to read:

“75-2-413. Civil penalties — ~~venue out-of-state litigants — effect of action — presumption of continuing violation under certain circumstances.~~ (1) (a) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed \$10,000 ~~per~~ for each violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~ or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101. This subsection does not apply to money collected by an approved local air pollution control program.”

Section 7. Section 75-2-514, MCA, is amended to read:

“75-2-514. Civil penalties — venue for actions to recover disposition of civil penalties. (1) (a) A district court may assess a civil penalty of not more than \$25,000 a day upon a person that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

(3) *Penalties provided for in subsection (1) are recoverable in an action brought by the department. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.”*

Section 8. Section 75-2-515, MCA, is amended to read:

“75-2-515. Administrative enforcement. (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator’s agent. The notice must specify the provision of this part or the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order, or an order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the order is received, the person that has been named requests, in writing, a hearing before the board.

(3) On receipt of a hearing request, the board shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this section. If, after a hearing, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(4) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. Any order issued by the department under this section requiring payment of an administrative civil penalty must specify the basis for the penalty assessment.

(b) A penalty may not be assessed under this section for any day of violation that occurred more than 3 years prior to the department issuing the order requiring payment of the penalty.

(c) In determining the amount of a penalty assessed to a person under this section, the department shall consider *the penalty factors in [section 1].*:

- ~~(i) the seriousness of the violation;~~
- ~~(ii) the duration of the violation;~~
- ~~(iii) any economic benefit derived from the violation;~~
- ~~(iv) the person's good faith efforts to comply with the requirements in question;~~
- ~~(v) the person's compliance history;~~
- ~~(vi) the person's ability to pay a penalty; and~~
- ~~(vii) other matters as justice may require.~~

(5) In addition to or instead of issuing an order under subsection (2), the department may:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or

(b) initiate action under 75-2-514.”

Section 9. Section 75-5-611, MCA, is amended to read:

“75-5-611. Violation of chapter — administrative actions and penalties — notice and hearing. (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:

- (a) the provision of statute, rule, permit, or approval alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the specific nature of corrective action that the department requires;
- (d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and
- (e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

- (i) does not involve assessment of an administrative penalty; or
- (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.

(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or in Lewis and Clark County.

(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) An action initiated under this section may include an administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty may not exceed \$100,000 for any related series of violations.

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the *penalty factors in [section 1] criteria stated in 75-5-631(4)* and rules promulgated under 75-5-201.

(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

Section 10. Section 75-5-631, MCA, is amended to read:

“75-5-631. Civil penalties — injunctions not barred — venue. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter, the person is subject to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain enforcement proceedings in the name of the state. *Penalties are recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(4) ~~In an action seeking determining the amount of penalties under this section, the department district court shall take into account the penalty factors in [section 1]. following factors in determining an appropriate settlement or judgment, as appropriate:~~

~~(a) the nature, circumstances, extent, and gravity of the violation; and~~

~~(b) with respect to the violator, the violator’s ability to pay and prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator’s action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.”~~

Section 11. Section 75-6-109, MCA, is amended to read:

“75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator’s agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department’s order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department’s order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) (a) An action initiated under this part may include an administrative penalty not to exceed:

(i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and

(ii) \$500 for each day of violation for other violations.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the *penalty factors in [section 1] criteria stated in 75-6-114* and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section.”

Section 12. Section 75-6-114, MCA, is amended to read:

“75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed \$10,000. *The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) When seeking penalties under this section, the department shall take into account the *penalty factors in [section 1]* following factors in determining an appropriate settlement or judgment, as appropriate:

(a) ~~the nature, circumstances, extent, and gravity of the violation; and~~

~~(b) with respect to the violator, the violator’s ability to pay, prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator’s action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.~~

(5) Civil penalties collected pursuant to this section must be deposited in the state general fund.”

Section 13. Section 75-10-228, MCA, is amended to read:

“75-10-228. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, or a license provision is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

~~(3)~~(4) Fines and penalties collected for violations of this part must be deposited in the solid waste management account provided for in 75-10-117.”

Section 14. Section 75-10-417, MCA, is amended to read:

“75-10-417. Civil penalties. (1) ~~Any~~ A person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 ~~per~~ for each violation. Each day of violation constitutes a separate violation. *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1].*

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. *An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section ~~shall~~ *must* be deposited in the state general fund.”

Section 15. Section 75-10-424, MCA, is amended to read:

“75-10-424. Administrative penalty. (1) The department may assess a person who violates a provision of this part; or a rule adopted under this part; an administrative penalty, not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider *the penalty factors in [section 1]:*

~~(a) the gravity and the number of violations;~~

~~(b) the degree of care exercised by the alleged violator;~~

~~(c) whether significant harm resulted to the public health or the environment; and~~

~~(d) the degree of potential significant harm to the public health or the environment.~~

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may ~~seek~~ *file an action* to recover the amount ~~in an appropriate not paid. The action must be brought district court in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund.”

Section 16. Section 75-10-542, MCA, is amended to read:

“75-10-542. Penalties. (1) A person who ~~willfully~~ *purposely or knowingly* violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined *an amount* not to exceed \$250, *be* imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ *is* subject to a civil penalty of not more than \$50. Each day upon which a violation of this part or a rule or order occurs is a separate violation.

(3) *Penalties assessed under subsection (2) must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.”*

Section 17. Section 75-10-1222, MCA, is amended to read:

“75-10-1222. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator’s agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service is complete on the date of mailing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order is final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-10-1221.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department’s order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for the violator to correct the violation.

(5) (a) An action initiated by the department under this section may include an administrative penalty not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be deposited in the account provided for in 75-10-1203.

(b) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1].*

(6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under this section."

Section 18. Section 75-10-1223, MCA, is amended to read:

"75-10-1223. Penalties and fines. (1) A person who disposes of septage in violation of 75-10-1210 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$500.

(2) (a) A person who violates this part or a rule or order adopted pursuant to this part is subject to a civil penalty of not more than \$500. Each day that violation of this part, a rule of the department, or an order issued pursuant to this part occurs constitutes a separate violation. The department or the county attorney of the county in which the violation occurred may file an action to collect the penalty.

(b) *Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Penalties collected by the department under this section must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Fines and penalties collected by a county must be deposited in the general fund of the county."

Section 19. Section 75-11-223, MCA, is amended to read:

"75-11-223. Civil penalties. (1) (a) ~~Any~~ A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 ~~per~~ *for each* violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation

occurred shall petition the district court to impose, assess, and recover the civil penalty. *An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224.”

Section 20. Section 75-11-516, MCA, is amended to read:

“75-11-516. Civil penalties. (1) (a) A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. *Penalties are also recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or orders of the department or the board.

(4) Money collected under this section must be deposited in the state general fund.”

Section 21. Section 75-11-525, MCA, is amended to read:

“75-11-525. Administrative penalties for violations — appeals — venue for hearings. (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.

(b) *Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [section 1].*

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator’s agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

- (a) the provision alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under this section;
- (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;
- (e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;
- (f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and
- (h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred. This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

- (a) the provision allegedly violated;
- (b) the facts that constitute the alleged violation;
- (c) the specific nature of any corrective action that the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and
- (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to the public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. *The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(6) Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state general fund.”

Section 22. Section 75-20-408, MCA, is amended to read:

“75-20-408. Penalties for violation of chapter — civil action by attorney general actions to enforce. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof of the certificate under 75-20-304(2) or, having first obtained a certificate, constructs, operates, or maintains a facility ~~other than~~ *not* in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted ~~thereunder~~ *under this chapter* or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted ~~thereunder~~ *under this chapter* or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than \$10,000 for each violation. *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 1].*

(b) Each day of a continuing violation constitutes a separate offense.

(c) ~~The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana. Penalties are recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

(2) Whoever *purposely* or knowingly ~~and willfully~~ violates subsection (1) shall be fined not more than \$10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it ~~may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana, if mutually agreed on by the parties in the action, or in the district court of the county in which the violation occurred or imminent violation will occur,~~ for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued ~~hereunder~~ *under this chapter*. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order ~~shall~~ *must* be granted without bond.

~~(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.~~

~~(5)~~(4) All fines and penalties collected ~~shall~~ *must* be deposited in the state special revenue fund for the use of the department in administering this chapter.”

Section 23. Section 76-4-109, MCA, is amended to read:

“76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine ~~of~~ *in an amount* not to exceed \$1,000.

(2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule or order issued under this part is subject to a civil penalty *in an amount* not to exceed \$1,000. Each day of violation constitutes a separate violation.

(b) *Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in [section 1]. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.*

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.”

Section 24. Section 82-4-141, MCA, is amended to read:

“82-4-141. Violation — penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as provided in this section. These penalties ~~shall be~~ are recoverable in ~~any an~~ action brought in the name of the state of Montana by the ~~attorney general~~ department in the district court of the first judicial district, ~~of this state in and for the county of~~ Lewis and Clark County, or in the district court having jurisdiction of the defendant.

(2) The ~~department may~~ attorney general shall, upon the request of the director, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary *injunction*, or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who ~~willfully~~ *purposely or knowingly* violates any of the provisions of this part or any determination or order adopted under this part ~~which~~ that has become final is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

(4) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].”*

Section 25. Section 82-4-254, MCA, is amended to read:

“82-4-254. Violation — penalty — waiver. (1) (a) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who ~~willfully~~ *purposely or knowingly* authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$5,000 for the violation and an additional civil penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. ~~Any~~ A person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which the failure or violation continues.

(b) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].*

(c) The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. By filing a written request within 20 days of receipt of the notice of violation, stating the reason for the request, the person or operator is entitled to a hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after issuing the notice of violation. After a hearing, the board shall make findings of fact, shall issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in ~~any an~~ *an* action brought ~~in the name of the state of Montana~~ by the ~~department attorney general~~ in the district court of the first judicial district, Lewis and Clark County, *if mutually agreed on by the parties in the action, or in the district court having jurisdiction over the defendant.*

(4) ~~The attorney general shall, upon request of the director of the department may, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:~~

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who ~~willfully~~ *purposely or knowingly* violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) ~~Any~~ A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) ~~Any~~ A person who except as permitted by law ~~willfully~~ *purposely or knowingly* resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.”

Section 26. Section 82-4-361, MCA, is amended to read:

“82-4-361. Violation — penalties — waiver. (1) (a) The department may assess an administrative civil penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who ~~willfully~~ *purposely or knowingly* authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

(2) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].* ~~The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

- ~~(a) the nature, circumstances, extent, and gravity of the violation;~~
- ~~(b) the violator's prior history of violations;~~
- ~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~
- ~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~
- ~~(e) other matters that justice may require.~~

(3) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

(4) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after issuing the notice of the violation. The person or operator, by filing a written request stating the reason for the request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing before the board on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted. The board shall order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in district court.

(5) Legal actions for injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the first judicial district, Lewis and Clark County.”

Section 27. Section 82-4-441, MCA, is amended to read:

“82-4-441. Penalty — enforcement. (1) The department may assess against a person who violates any of the provisions of this part, rules adopted under this part, or provisions of a reclamation permit:

(a) a civil penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues following the service of notice of the violation.

(2) *Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3].* ~~The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

- ~~(a) the nature, circumstances, extent, and gravity of the violation;~~
- ~~(b) the violator's prior history of violations within the past 3 years;~~
- ~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~
- ~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~
- ~~(e) other matters that justice may require to decrease the amount of penalty.~~

(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, *if mutually agreed on by the parties in the action*, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part in the district court of the first judicial district, Lewis and Clark County, *if mutually agreed on by the parties in the action*, or in the district court of the county in which the opencut mine is located.”

Section 28. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 75 and Title 76, and the provisions of Title 75 and Title 76 apply to [sections 1 and 2].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [sections 3 and 4].

Section 29. 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 30. Contingent voidness. (1) If any portion of [section 3] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [section 25] and the reference in [section 3(4)] to 82-4-254 are void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Section 31. Effective date. [This act] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 488

[HB 431]

AN ACT REVISING THE REQUIREMENTS FOR CREATING A RURAL IMPROVEMENT DISTRICT; REQUIRING THAT A RESOLUTION AND NOTICE OF INTENTION TO CREATE A DISTRICT IN WHICH RELATED IMPROVEMENTS COMPOSE A LARGER PROJECT INCLUDE THE FULL SCOPE, INCLUDING COSTS AND IMPACTS, OF THE RELATED OR LARGER PROJECT; REVISING THE REQUIREMENTS FOR A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT; REVISING WHEN A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT IS SUFFICIENT TO BAR THE PROCEEDINGS; RESTRICTING THE AUTHORITY OF THE COUNTY COMMISSIONERS TO OVERRULE THE PROTESTS; AND AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2109, AND 7-12-2112, MCA.

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

Section 1. Section 7-12-2103, MCA, is amended to read:

“7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating ~~any a~~ special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention ~~to do so~~.

(2) The resolution ~~shall~~ *must*:

(a) designate the number of ~~such~~ *the* district;

(b) describe the boundaries ~~thereof~~ *of the district*;

(c) state ~~therein~~ *in the resolution* the general character of the improvements ~~which~~ *that* are to be made;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost ~~thereof~~ *of the work*; ~~and~~

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district; *and*

(f) if applicable, provide any additional information required to be included in the notice under 7-12-2105(3)(a).

(3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of

streets and rights-of-way or portions thereof of streets and rights-of-way, and it may exempt any of the work already done upon a street to the official grade.”

Section 2. Section 7-12-2105, MCA, is amended to read:

“7-12-2105. Notice of resolution of intention to create district — hearing. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage of the resolution of intention as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner’s name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvement or improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. *If one or more of the improvements proposed to be made or acquired by purchase are related to each other or are part of a larger project, the notice must describe the entire scope of the related or larger project, including the estimated costs of all related improvements, the method or methods by which these costs will be assessed, the impacts on property rights, and other actual or potential costs reasonably related to the proposed improvement.*

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.”

Section 3. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district. (1) At any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the ~~extending or~~ creation or extension of the district to be assessed, or both. The protest must be in writing, ~~and identify the property in the district owned by the protestor, and be signed by all owners of the property.~~ and identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.

(2) (a) For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.”

Section 4. Section 7-12-2112, MCA, is amended to read:

“7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), ~~no~~ further proceedings ~~shall~~ *may not* be taken for a period of ~~6 months~~ *6 months* from the date when ~~said~~ *a* protest was received by the county clerk ~~when~~ *if* the board of county commissioners finds that ~~such~~ *the* protest is made by:

(a) ~~the owners of property in within the proposed district to be assessed for more having projected assessments, when aggregated, representing not less than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention total projected assessments for property within the district;~~

(b) *the owners of property within the proposed district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of the property within the district; or*

(c) *not less than 50% of the owners of property within the district.*

~~(2) In case the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board.~~

(2) If the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board if:

(a) the improvements are ordered by the department of environmental quality or the federal environmental protection agency; or

(b) the governing body makes written findings after a public hearing and public comment, based on evidence in the record, that the proposed improvements protect public health or the environment, mitigate harm to the public health or environment, and are achievable under current technology.”

Approved April 28, 2005

CHAPTER NO. 489

[HB 435]

AN ACT ESTABLISHING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP PROGRAM TO ENCOURAGE MONTANA'S MOST TALENTED HIGH SCHOOL GRADUATES OR MONTANA HIGH SCHOOL GRADUATES WITH FINANCIAL NEEDS TO ACQUIRE A POSTSECONDARY EDUCATION BY PROVIDING STUDENT SCHOLARSHIPS BASED ON MERIT OR FINANCIAL NEED TO STUDENTS ATTENDING IN-STATE POSTSECONDARY INSTITUTIONS AND CERTAIN OUT-OF-STATE PUBLIC COLLEGES OR UNIVERSITIES OR, WITH DONATIONS FROM PRIVATE SOURCES, TO STUDENTS ATTENDING MONTANA PRIVATE COLLEGES IF SO DESIGNATED BY THE DONOR; ESTABLISHING A GOVERNOR'S SCHOLARSHIP ADVISORY COUNCIL APPOINTED BY THE GOVERNOR TO ASSIST THE BOARD OF REGENTS OF HIGHER EDUCATION IN AWARDING AND ADMINISTERING THE SCHOLARSHIP PROGRAM; PROVIDING ANNUAL SCHOLARSHIPS BASED ON VARIOUS CRITERIA; PROVIDING FOR REALLOCATION OF MONEY TO OTHER SCHOLARSHIPS IF A HIGH SCHOOL DOES NOT HAVE AN ELIGIBLE STUDENT OR IF A RECIPIENT BECOMES INELIGIBLE; PROVIDING THAT SCHOLARSHIP FUNDING IS

A STATE OBLIGATION; ESTABLISHING STUDENT ELIGIBILITY CRITERIA; AUTHORIZING THE BOARD OF REGENTS TO ADOPT PROCEDURES TO IMPLEMENT THE MERIT-BASED AND FINANCIAL NEED-BASED SCHOLARSHIPS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, if Montana is to achieve success in attracting new businesses and in promoting a healthier climate for economic growth to provide quality, high-paying jobs for Montana citizens, it is essential that Montana's most talented high school graduates become the "engines" that drive the state's future economic growth; and

WHEREAS, the purpose of establishing the Governor's Postsecondary Scholarship Program is to provide Montana residents with greater access to Montana's postsecondary institutions and Montana's private colleges, through scholarship grants based on academic achievement and financial need, with a goal of alleviating student debt burdens, which will allow more Montanans to stay in the state upon graduation.

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

Section 1. Short title. [Sections 1 through 3 and 5 through 7] may be cited as the "Governor's Postsecondary Scholarship Program".

Section 2. Governor's postsecondary scholarship program — duties of council — duties of board. (1) There is a governor's postsecondary scholarship program administered by the board through the office of the commissioner of higher education with assistance from a three-member council created in [section 4].

(2) The council shall review the lists and applications submitted in accordance with procedures adopted by the board pursuant to [section 5]. From those lists and applications, the council shall prepare and submit a final list of qualified scholarship recipients to the board. Following consultation with the council, the board shall pay for scholarships awarded to qualified recipients.

(3) The board may accept donations from public or private sources and shall distribute these funds to the scholarship program and in accordance with the criteria determined by the board in consultation with the council.

(4) Funds from public sources may not be used to pay for scholarships to students enrolled in Montana private colleges.

(5) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to be used by the board to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.

Section 3. Definitions. As used in [sections 1 through 3 and 5 through 7], the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "At-large student" means a Montana resident who meets the admission requirements established by board policy or by the admissions office of a Montana private college.

(3) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(4) "Certificate program" or "certificate" means a program generally completed in 1 academic year that requires less than 60 credits and that is not a self-supporting, customized training course or the certificate awarded for completion of the program.

(5) "Council" means the governor's postsecondary scholarship advisory council created in [section 4].

(6) "Montana private college" means a nonprofit private educational institution as defined in 15-30-163(3)(b).

(7) "Nontraditional student" means a first-time student who enters a postsecondary institution or Montana private college more than 3 years after high school graduation. As used in this subsection, "first-time student" means a student who is attending a postsecondary institution to receive a first certificate or associate or baccalaureate degree.

(8) "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.

(9) "Scholarship" means a payment toward tuition and mandatory fees, excluding room and board, rounded up to the nearest dollar.

(10) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended.

Section 4. Governor's postsecondary scholarship advisory council — terms. (1) There is a three-member governor's postsecondary scholarship advisory council appointed by the governor.

(2) Members shall serve staggered 3-year terms and must include:

(a) at least one member with experience in financial aid at a postsecondary institution; and

(b) at least one member with experience in secondary or postsecondary education.

(3) A presiding officer must be selected by the council from among its membership at the first meeting of the council.

(4) The council shall:

(a) advise the board on issues related to the governor's postsecondary scholarship program and other student assistance programs; and

(b) report to the governor annually or at any time upon request by the governor.

(5) The council is attached to the commissioner of higher education for administrative purposes only, as provided in 2-15-121, and members are entitled to compensation as provided in 2-15-122(5).

Section 5. Administration of scholarship program. (1) The commissioner of higher education, under the authority of the board and in consultation with the council, shall administer the governor's postsecondary scholarship program.

(2) The board shall adopt procedures to implement the requirements of [sections 1 through 3 and 5 through 7], including but not limited to:

(a) procedures for obtaining lists from Montana accredited high schools, including accredited nonpublic high schools, of those high school seniors who are eligible to receive a governor's postsecondary scholarship;

(b) when possible, procedures for obtaining lists of nontraditional students or recipients of general educational development equivalency diplomas in the current year;

(c) procedures for an application process for at-large students;

(d) procedures regarding the application process for eligible students to obtain a scholarship and regarding notification to students, parents, teachers, and school administrators of all criteria, procedures, and timelines for applying for the scholarships;

(e) procedures for entering into cooperative agreements with Montana tribal community colleges;

(f) procedures for the annual disbursement of money to postsecondary institutions and Montana private colleges to pay for scholarships awarded to eligible students.

(3) The board shall develop procedures:

(a) to transmit the payment for each scholarship to the financial officer of the postsecondary institution or the Montana private college;

(b) to be used by the postsecondary institution or the Montana private college in certifying the eligibility status of each student who receives a scholarship.

(4) Each postsecondary institution or Montana private college that receives scholarship payments shall prepare and submit to the board, by a date established by the board, a report that includes an audit of the postsecondary institution's or Montana private college's administration of the scholarships and a complete accounting of scholarship funds.

(5) The board shall establish procedures:

(a) to allow a student to transfer from one postsecondary institution to another without loss of the scholarship; and

(b) to ensure compliance with [section 2(4)] if a student transfers from a postsecondary institution to a Montana private college.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

Section 6. Types and amounts of scholarships — recipient qualifications. (1) Following consultation with the council and selection of eligible recipients, the board shall pay the costs of a governor's postsecondary scholarship at a postsecondary institution or, subject to the provisions of [section 2(4)], at a Montana private college in which a recipient has enrolled.

(2) Subject to the provisions of subsections (6), (7), and (9), scholarships must be provided in each fiscal year to eligible recipients as follows:

(a) merit-based scholarships of \$2,000 a year awarded to 40 at-large students who enroll in 4-year postsecondary institutions;

(b) a merit-based scholarship of \$1,000 a year, which may be awarded to one graduate of each of Montana's accredited high schools, including accredited nonpublic high schools, who enrolls in a 4-year postsecondary institution;

(c) a merit-based scholarship of \$1,000 a year, which may be awarded to one graduate of each of Montana's accredited high schools, including accredited nonpublic high schools, who enrolls in a 2-year postsecondary institution;

(d) merit-based scholarships of \$1,000 a year awarded to 70 at-large students who enroll in 2-year postsecondary programs;

(e) a scholarship of \$1,000 a year based on recognition of financial need awarded to 180 students, including students who return to school as nontraditional students, who enroll in a 2-year postsecondary program;

(f) scholarships of \$1,000 a year based on recognition of financial need awarded to 100 students, including students who return to school as nontraditional students, who enroll in 2-year postsecondary programs and who major in the area of health sciences; and

(g) scholarships of \$1,000 a year based on financial need awarded to 220 students, including students who return to school as nontraditional students, who enroll in 2-year postsecondary programs and who are seeking a certificate or degree in the field of technology.

(3) (a) A recipient who is awarded a scholarship to attend a 2-year postsecondary program is eligible to receive the scholarship for a maximum of 2 consecutive years, provided the recipient meets the requirements provided in [section 7].

(b) A recipient who is awarded a scholarship to attend a 4-year postsecondary institution or, subject to the availability of private funds, to a Montana private college is eligible to receive the scholarship for a maximum of 4 consecutive years, provided the recipient meets the requirements provided in [section 7].

(4) The recipient of a scholarship award is not precluded from receiving other financial aid, awards, or scholarships that would result in an overpayment of financial aid as determined by the postsecondary institution's or Montana private college's financial aid office.

(5) Each scholarship must be distributed in equal installments that correspond with the terms of the postsecondary institution's or the Montana private college's academic year.

(6) If a Montana high school has no graduates who qualify for a scholarship awarded under subsection (2)(b) or (2)(c) or if a recipient of a scholarship becomes ineligible for renewal of a scholarship, the money for those scholarships reverts and may be reallocated by the commissioner of higher education to scholarships for at-large students.

(7) Except when a donor of private funds designates that scholarship funds must be given to students attending a Montana private college, the board, following consultation with the council, shall establish criteria and procedures for distributing funds from private sources for scholarships to students enrolled in postsecondary institutions. Funds from private sources may not be used as an offset to general fund appropriations.

(8) Except when a donor of private funds designates that scholarship funds must be given to students attending a Montana private college, scholarship awards are determined solely by the board following consultation with the council. Scholarship awards are not subject to appeal.

(9) Except for funds donated from private sources, the obligation for funding the governor's postsecondary scholarship program is an obligation of the state.

This section may not be construed to require the board to provide a scholarship to an eligible student without a line item appropriation to the board.

Section 7. Eligibility requirements — basic residency requirements. (1) To be eligible to receive a scholarship, an entering freshman student seeking a certificate or an associate or baccalaureate degree at a postsecondary institution:

(a) must be classified as a Montana resident for in-state tuition under the board's policy; and

(b) for purposes of a scholarship based on financial need, must have met the admission requirements established by board policy, demonstrated financial need by completing the free application for federal student aid, and be enrolled in a 2-year postsecondary program; or

(c) for purposes of a merit-based scholarship, must meet the admission requirements established by board policy and those eligibility criteria established by the board, upon recommendation by the council, at least part of which must include a grade point average or a numerical score on a standardized college admission test, must be admitted, enrolled, or classified as an undergraduate student in a certificate program or an associate or baccalaureate degree program at a postsecondary institution, and must have completed the free application for federal student aid, which may not result in expected family contributions exceeding the cost of attendance.

(2) To be eligible to receive a scholarship, an entering freshman student seeking a certificate or an associate or baccalaureate degree at a Montana private college:

(a) must be classified as a Montana resident for in-state tuition under the board's policy; and

(b) must meet the admission requirements and eligibility criteria established by the admissions office of the Montana private college.

(3) To be eligible to receive a scholarship, a sophomore student seeking a certificate or an associate or baccalaureate degree at a 2-year or 4-year postsecondary institution or a Montana private college must meet the residency requirement provided in subsection (1)(a) or (2)(a) and, except for extenuating circumstances as determined through procedures established by the board:

(a) (i) for a student who is receiving a scholarship based on financial need and who is attending a 2-year postsecondary program, must have completed all first year requirements for an associate degree, including satisfactory academic progress; or

(ii) for a student who is receiving a merit-based scholarship and who is attending a 4-year postsecondary institution or a Montana private college, must have completed a minimum of 30 semester hours at the postsecondary institution or Montana private college;

(b) must have earned a cumulative grade point average of 2.5 at the end of the school term in which the student completed 30 semester hours; and

(c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(4) Except as provided in subsection (6), to be eligible to receive a scholarship, a junior student seeking a baccalaureate degree at a postsecondary institution or a Montana private college must meet the residency requirement

provided in subsection (1)(a) or (2)(a) and, except for extenuating circumstances as determined through procedures established by the board:

(a) must have completed a minimum of 60 semester hours;

(b) must have earned a cumulative grade point average of 2.5 at the end of the school term in which the student completed 60 semester hours; and

(c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(5) Except as provided in subsection (6), to be eligible to receive a scholarship, a senior student seeking a baccalaureate degree at a postsecondary institution or a Montana private college must meet the residency requirement provided in subsection (1)(a) or (2)(a) and, except for extenuating circumstances as determined through procedures established by the board:

(a) must have completed a minimum of 90 semester hours;

(b) must have earned a cumulative grade point average of 2.5 at the end of the school term in which the student completed a minimum of 90 semester hours; and

(c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(6) A student who receives a 4-year scholarship to attend an in-state postsecondary institution as a freshman and sophomore may transfer the scholarship to attend a public out-of-state college or university as a junior or senior if the transfer to the public out-of-state college or university is necessary to complete the final 2 years of a 4-year degree program.

(7) (a) If an at-large student fails to maintain a cumulative grade point average of at least 2.5 at the end of the school term in which the student completed the required semester hours, the scholarship is terminated.

(b) A student may appeal a termination based on extenuating circumstances as determined through procedures established by the board.

(8) A student is ineligible to receive a governor's postsecondary scholarship if the student:

(a) has been awarded a Montana university system honor scholarship;

(b) is a male and has failed to meet the federal Title IV selective services registration requirements;

(c) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(d) is incarcerated. Upon release, the student may begin receiving scholarship payments if the student meets all other eligibility requirements. If approved by the board, credits earned during incarceration may be counted toward eligibility.

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 9. Implementation. (1) The provisions of [this act] may not be implemented without a line item appropriation provided for the purposes of [this act].

(2) If the appropriation provided pursuant to subsection (1) is insufficient to fully fund the scholarship program provided for in [this act], after meeting the

obligation to provide continuing scholarships for returning sophomore, junior, and senior students, the board shall reduce the number of scholarships awarded in each category under [section 6(2)] in proportion to the amount of money appropriated and notify the office of budget and program planning of the reduction. Following consultation with the council, the board shall adopt procedures to implement this section.

Section 10. Codification instruction. (1) [Sections 1 through 3 and 5 through 7] are intended to be codified as an integral part of Title 20, chapter 26, and the provisions of Title 20, chapter 26, apply to [sections 1 through 3 and 5 through 7].

(2) [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 15, and the provisions of Title 2, chapter 15, part 15, apply to [section 4].

Section 11. Effective date — applicability. [This act] is effective on passage and approval and applies to the 2006 academic year.

Approved April 28, 2005

CHAPTER NO. 490

[HB 438]

AN ACT PROVIDING BRAILLE SERVICES TO A BLIND OR VISUALLY IMPAIRED CHILD; DETERMINING THE NEED FOR BRAILLE INSTRUCTION; REQUIRING THE BOARD OF PUBLIC EDUCATION TO ADOPT STANDARDS FOR PERSONNEL WHO PROVIDE BRAILLE INSTRUCTION; REQUIRING A SCHOOL DISTRICT TO ENSURE THE AVAILABILITY OF TEXTBOOKS THAT COMPLY WITH FEDERAL LAW IN A TIMELY MANNER; REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A BRAILLE ELECTRONIC EQUIPMENT LOAN PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-602, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article X, section 1(1), of the Montana Constitution establishes the state's goal of providing a system of education that will develop the full educational potential of each person and guarantees equality of educational opportunity to each person; and

WHEREAS, according to an article in a 1998 edition of *Star Student*, a preliminary study evaluating the correlation between adult literacy skills and employment conducted by Dr. Ruby Ryles, the founding coordinator of the master's program in orientation and mobility at the Louisiana Tech University, found that in a study of 74 adults who were born legally blind and were patrons of the Library for the Blind, 44% of the participants who had learned to read in Braille were unemployed, while those who had learned to read using print had a 77% unemployment rate; and

WHEREAS, the preliminary unemployment results prompted Dr. Ryles to conduct a study to establish the correlations between present literacy rates and the early reading education by comparing the results of 45 legally blind high school students from 45 cities, towns, and rural communities in 11 eastern and southern states with those of 15 sighted students attending the same schools as the legally blind students; and

WHEREAS, Dr. Ryles discovered that early Braille readers outperformed sighted students in vocabulary by a 5% margin on the comprehension, vocabulary, and other subtests of the Stanford achievement test and nearly matched their sighted classmates on the Woodcock Johnson R (revised) test; and

WHEREAS, in the capitalization and punctuation portion of the Woodcock Johnson R (revised) test, early Braille reading students who received Braille instruction 4 to 5 days each week in the 1st through 3rd grades produced a mean score that was 7 percentage points higher than their sighted classmates, 25 percentage points higher than students who received Braille instruction fewer than 4 days each week, and 42 percentage points higher than their legally blind classmates who received no Braille instruction; and

WHEREAS, in the spelling portion of the Woodcock Johnson R (revised) test, early Braille learners averaged 1 percentage point higher than fully sighted readers, 32 percentage points higher than students who received Braille instruction fewer than 4 days each week in 1st through 3rd grades, and 38 percentage points higher than legally blind students who received no instruction in reading Braille; and

WHEREAS, the studies performed by Dr. Ryles lead to the inescapable conclusion that early Braille education is crucial to literacy and that literacy is crucial to employment.

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

Section 1. Short title. [Sections 1 through 6] may be cited as the “Blind Persons’ Literacy Rights and Education Act”.

Section 2. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) “Blind or visually impaired child” means an individual who is eligible for special education services and who:

(a) has a visual acuity of 20/70 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or

(b) has a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in subsection (1)(a).

(2) “Braille” means the system of reading and writing through touch, commonly known as standard English Braille.

(3) “Individualized education program” means a written statement developed for a student eligible for special education services pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1401(11).

Section 3. Individualized education program for child with blindness. The individualized education program for each blind or visually impaired child must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

Section 4. Standards of competency and instruction. Instruction in Braille reading and writing must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

Section 5. Instructional materials and Braille equipment — Braille equipment loan program. The Montana school for the deaf and blind shall establish a Braille electronic equipment loan program that may be used by a

school district to provide Braille equipment as specified in a student's individualized education program. The equipment must be loaned on a temporary basis to a school district, but the district is responsible for purchasing like equipment required by the student's individualized education program.

Section 6. Personnel training. The board of public education shall establish standards to ensure that individuals who provide Braille instruction are appropriately trained and supervised.

Section 7. Section 20-7-602, MCA, is amended to read:

"20-7-602. Textbook selection and adoption — definition. (1) Textbooks ~~shall~~ *must* be selected by the district superintendent or by the school principal if there is no district superintendent. ~~Such~~ *The* selections ~~shall be~~ *are* subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

(2) In selecting textbooks, the district shall ensure that the materials are made available to each blind and visually impaired child in a timely manner in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq."

Section 8. Appropriation. The following money is appropriated from the general fund to the Montana school for the deaf and blind to establish a Braille equipment loan program and to provide for expansion of the outreach program to assist public school districts in conforming with the requirements of the Blind Persons' Literacy Rights and Education Act:

Fiscal year 2006	\$244,273
Fiscal year 2007	\$195,731

Section 9. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 20, chapter 7, part 4, and the provisions of Title 20, chapter 7, part 4, apply to [sections 1 through 6].

Section 10. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 491

[HB 457]

AN ACT REVISING LAWS GOVERNING LICENSING AND PROFESSIONAL PRACTICES OF RADIOLOGIC TECHNOLOGISTS AND RADIOLOGIST ASSISTANTS; REVISING DEFINITIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIC TECHNOLOGISTS AND SUPERVISION OF THOSE INJECTIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIST ASSISTANTS; REQUIRING ACTION BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS UPON REQUESTS FOR LICENSURE BY RADIOLOGIC TECHNOLOGISTS; REQUIRING ADOPTION OF RULES BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS; AMENDING SECTIONS 37-14-102, 37-14-301, AND 37-14-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-14-102, MCA, is amended to read:

“37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) “Board” means the board of radiologic technologists provided for in 2-15-1738.

(2) “Department” means the department of labor and industry.

~~(3) “General supervision” means the procedure is furnished under the radiologist’s overall direction and control. However, the radiologist’s presence is not required at the site during the performance of the procedure.~~

(3) “General supervision” means face-to-face communication, direction, observation, and evaluation by the radiologist at least monthly, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication.

~~(4)~~(4) “License” means an authorization issued by the department to perform x-ray procedures on persons.

~~(5)~~(5) “Licensed practitioner” means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturistry, dental hygiene, podiatry, osteopathy, or chiropractic.

~~(6)~~(6) “Limited permit technician” means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

~~(7)~~(7) “Performance of x-ray procedures” means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient’s accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

~~(8)~~(8) “Permit” means an authorization that may be granted by the board to perform x-ray procedures on persons when the applicant’s qualifications do not meet standards required for the issuance of a license.

~~(9)~~(9) “Radiologic technologist” means a person, other than a licensed practitioner, who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be used in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

~~(10)~~(10) “Radiologist” means a person who is licensed to practice medicine under Title 37, chapter 3, and who is board eligible or board certified by the American board of radiology, and who resides and practices in Montana.

~~(11)~~(11) "Radiologist assistant" means an advanced-level licensed radiologic technologist who works under the ~~general~~ supervision of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment."

Section 2. Section 37-14-301, MCA, is amended to read:

"37-14-301. Limitation of license authority — exemptions. (1) A person may not perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturistry if the person is certified by the board of dentistry as having passed an examination testing the person's proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) This chapter may not be construed to limit or affect in any respect the practice of their respective professions by licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe x-ray procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radionuclide material) intravenously *by the use of venous puncture and saline solution flush* upon request *and direction* of a licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure ~~or, the radiologist, or personnel trained in advanced cardiac life support~~ must be immediately available ~~within the x-ray department in the facility~~. Injections must be for diagnostic studies only and not for therapeutic purposes. Except as provided in 37-14-313, permitted injections include peripheral intravenous injections but specifically exclude intra-arterial ~~or intracatheter~~ injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under ~~another a separate~~ licensing act may not perform any of the activities listed in this subsection. *A radiologist assistant licensed under 37-14-313 may give injections related to the procedures authorized by the board to be provided by a radiologist assistant without regard to the restrictions on radiologic technologists provided in this section, except that when contrast media is used, a licensed physician or additional medical personnel trained in advanced cardiac life support must be immediately available in the facility.*"

Section 3. Section 37-14-313, MCA, is amended to read:

"37-14-313. Radiologist assistant — scope of practice — board approval. (1) A person licensed under this chapter who has completed an advanced academic program encompassing a nationally recognized radiologist assistant curriculum or certification and who has a radiologist-directed clinical

preceptorship certificate may practice as a radiologist assistant upon approval by the board. *Board action upon a request for approval must be taken, with or without prior rulemaking, after a written request for approval is received by the board.*

(2) (a) The specific duties allowed for a radiologist assistant may be defined by the board by rule. The rules must be consistent with guidelines adopted by the American college of radiology, the American society of radiologic technologists, the American registry of radiologic technologists, *the certifying board of radiology practitioner assistants*, and subsection (2)(b). *The board shall adopt rules governing the scope of practice for radiologist assistants in order to resolve any conflicts in that subject between the guidelines of the associations named in this subsection.*

(b) The rules must specify the functions that a radiologist assistant may perform in connection with diagnostic procedures under the ~~general~~ supervision of a radiologist, including radiology procedures, invasive procedures, procedures as delegated by a radiologist, and the types of injection of contrast media and radioactive isotopes (~~radio-nuclide~~) (*radionuclide*) material allowed.

(c) *The rules may specify levels of supervision based on education and experience, but at a minimum, the level of supervision must be general supervision.*

(e)(d) A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

(3) A radiologist assistant may also be referred to as a “radiology practitioner assistant”.

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

Approved April 28, 2005

CHAPTER NO. 492

[HB 473]

AN ACT REVISING LAWS RELATED TO FIRE SEASONS; ALLOWING SMALL, RECREATIONAL FIRES WITHOUT A PERMIT OR PERMISSION; AND AMENDING SECTIONS 7-33-2205 AND 7-33-2206, MCA.

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

Section 1. Section 7-33-2205, MCA, is amended to read:

“7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs. (1) The county governing body may in its discretion establish fire seasons annually, during which a person may not ignite or set ~~any~~ a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any *residential or commercial property*, forest, range, or croplands subject to the provisions of this part without having obtained an official written permit *or permission* to ignite or set a fire from the recognized protection agency for that protection area.

(2) *A permit or permission is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable structure and for which a suitable source of extinguishing the fire is available.*

~~(2)~~(3) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire.”

Section 2. Section 7-33-2206, MCA, is amended to read:

“7-33-2206. Violations. ~~Any~~ A person who ignites or sets ~~any~~ a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire ~~within~~ *on any residential or commercial property*, forest, range, or cropland subject to the provisions of this part without first having obtained a written permit *or permission from the recognized protection agency for that protection area* to ignite or set ~~such~~ the fire is guilty of a misdemeanor.”

Approved April 28, 2005

CHAPTER NO. 493

[HB 476]

AN ACT INCREASING THE MARRIAGE LICENSE FEE AND THE FEE FOR FILING A DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION TO FUND DOMESTIC AND SEXUAL VIOLENCE VICTIMS' SERVICES; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION PROGRAM; PROVIDING THAT THE BOARD OF CRIME CONTROL ADMINISTER GRANTS UNDER THE PROGRAM; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION ACCOUNT; AMENDING SECTIONS 25-1-201, 40-1-202, AND 40-1-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Domestic violence intervention account — administration by board of crime control. (1) There is a domestic violence intervention account in the state special revenue fund in the state treasury. There must be paid into this account the designated filing fees paid under 25-1-201(7) to the clerk of the district court. The money deposited in the account must be used for services provided under [section 2].

(2) Funds deposited in the account may be expended by the Montana board of crime control, as provided for in 2-15-2006, to fund services and activities under and payment of administrative costs of the domestic violence intervention program provided for in [section 2].

Section 2. Domestic violence intervention program. (1) The Montana board of crime control shall use the money in the domestic violence intervention account established by [section 1] to fund a domestic violence intervention program to provide grants to communities for misdemeanor probation officers or compliance officers to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626.

(2) In administering the domestic violence intervention program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement [sections 1 through 4].

Section 3. Program costs. The costs incurred by the Montana board of crime control in administering the domestic violence intervention program must be paid with money from the domestic violence intervention account established by [section 1]. The board may use up to 10% of the money deposited in the account for administrative costs. The board shall keep costs to a minimum and shall use the board's existing office space, personnel, equipment, and supplies to the extent possible.

Section 4. Restriction on use of funds. Funds deposited in the domestic violence intervention account may be used only for the program authorized in [section 2] and the costs authorized under [section 3] and may not be used to pay the expenses of any other program or service administered in whole or in part by the Montana board of crime control or the department of justice.

Section 5. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$160; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, ~~\$30~~ \$43;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for

the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, ~~\$30~~ \$43;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

(a) ~~prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~

(b) ~~after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.~~

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q).~~

~~(6)~~(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

~~(7)~~(6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$13 must be deposited in the domestic violence intervention account established by [section 1].

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 6. Section 40-1-202, MCA, is amended to read:

"40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one

party has appeared before the clerk of the district court and paid the marriage license fee of ~~\$30~~ \$43, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.”

Section 7. Section 40-1-311, MCA, is amended to read:

“40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 ~~must~~ shall, prior to executing the declaration, secure the medical certificate required by this chapter, which ~~shall~~ must be firmly attached to the declaration and ~~shall~~ must be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is ~~\$30~~ \$43 and ~~shall~~ must be paid to the clerk at time of filing.”

Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [sections 1 through 4].

Section 9. Coordination instruction. If both Senate Bill No. 67 and [this act] are passed and approved, then the amendments to 25-1-201 in both Senate Bill No. 67 and [this act] are void and 25-1-201 must read as follows:

“25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$160; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, ~~\$30~~ \$53;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, ~~\$30~~ \$53;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

~~(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~

~~(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.~~

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from

the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(a).~~

~~(6)(5)~~ Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

~~(7)(6)~~ The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund *to be used* for district court operations.

~~(7)~~ *Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$13 must be deposited in the domestic violence intervention account established by [section 1 of House Bill No. 476] and \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.*

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund.”

Section 10. Coordination instruction. If both Senate Bill No. 67 and [this act] are passed and approved, then the amendments to 40-1-202 in both Senate Bill No. 67 and [this act] are void and 40-1-202 must read as follows:

“40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of ~~\$30~~ \$53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.”

Section 11. Coordination instruction. If both Senate Bill No. 67 and [this act] are passed and approved, then the amendments to 40-1-311 in both Senate Bill No. 67 and [this act] are void and 40-1-311 must read as follows:

“40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 ~~must shall~~, prior to executing the declaration, secure the medical certificate required by this chapter, which ~~shall~~ *must* be firmly attached to the declaration and ~~shall~~ *must* be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is ~~\$30~~ \$53 and ~~shall~~ *must* be paid to the clerk at time of filing.”

Section 12. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 494

[HB 484]

AN ACT REQUIRING THE LICENSING OF A PERSON, FIRM, OR CORPORATION THAT OPERATES A MOBILE SLAUGHTER FACILITY; DEFINING “MOBILE SLAUGHTER FACILITY”; APPLYING THE SAME INSPECTION PROVISIONS AND REGULATIONS THAT ARE REQUIRED OF ALL OFFICIAL ESTABLISHMENTS TO MOBILE SLAUGHTER FACILITIES; PROVIDING A RESTRICTED APPROPRIATION; AMENDING SECTIONS 81-9-201, 81-9-217, 81-9-220, 81-9-227, AND 81-9-228, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 81-9-201, MCA, is amended to read:

“81-9-201. Meat establishment license — fees and renewals. (1) It is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry, *including the operation of a mobile slaughter facility as defined in 81-9-217*, or processing, storing, or wholesaling ~~the meat livestock or poultry~~ products ~~of either~~ without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than \$500.”

Section 2. Section 81-9-217, MCA, is amended to read:

“81-9-217. Definitions. As used in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the following definitions apply:

(1) “Adulterated” means the term applied to meat if:

(a) it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that if the substance is not an added substance, the product may not be considered adulterated if the quantity of the substance is insufficient to ordinarily render it injurious to health;

(b) it bears or contains, by reason of administration of any substance to the meat, an added poisonous or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw agricultural commodity, any of which may in the board's judgment make the meat unfit for human food;

(c) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(d) it bears or contains a food additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(e) it bears or contains a color additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act; however, the meat that is not otherwise considered adulterated under subsection (1)(c), (1)(d), or (1)(e) is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited by rule of the board;

(f) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(h) it is in whole or in part the product of an animal, including poultry, that has died otherwise than by slaughter;

(i) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(j) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348; or

(k) any valuable constituent has been in whole or in part omitted or abstracted from the meat, any substance has been substituted wholly or in part for meat, damage or inferiority has been concealed in any manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight or make it appear better or of greater value than it is.

(2) "Chief" means the chief meat inspector appointed as provided in 81-9-226.

(3) "Federal Food, Drug and Cosmetic Act" means 21 U.S.C. 301 through 392, as that law read on October 1, 1987.

(4) "Livestock" means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules or other equines, and alternative livestock, as defined in 87-4-406, whether alive or dead.

(5) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly or partially made from meat and is not specifically exempted by rule of the board.

(6) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products.

(7) "Misbranded" means the term applied to meat:

(a) if its labeling is false or misleading in any particular;

(b) if it is offered for sale under the name of another food;

(c) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food being imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable variations.

(f) if any word, statement, or other information required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to appear on the label is not prominently placed on the label, as compared with other words, statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) if it is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the board, unless:

(i) it conforms to the definition and standard; and

(ii) its label bears the name of the food specified in the definition and standard and, if required by the rules, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

(h) if it is represented as a food for which a standard of fill of container has been prescribed by rules of the board and it falls below the standard of fill of container applicable to the food, unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard;

(i) if it is not subject to the provisions of subsection (7)(g), unless its label bears:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (7)(i)(ii) is impracticable or results in deception or unfair competition, exemptions must be established by rules promulgated by the board.

(j) if it purports to be for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule prescribes as necessary in order to fully inform purchasers as to its value for those uses;

(k) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection (7)(k) is impracticable, exemptions must be established by rules promulgated by the board; or

(l) if it fails to bear directly on the meat and on its containers, as the board may by rule prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and other information that the board may require to ensure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

(8) (a) *“Mobile slaughter facility” means a mobile unit that is operated by a person licensed by the board to slaughter livestock or poultry, that is capable of providing onsite slaughter services for the owner of the livestock or poultry, and at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is regulated under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.*

(b) *The term does not mean a person engaged in custom slaughtering as provided in 81-9-218(2).*

(8)(9) *“Official establishment” means an establishment licensed by the board at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236. The term includes a mobile slaughter facility.*

(9)(10) *“Pesticide chemical”, “food additive”, “color additive”, and “raw agricultural commodity” have the same meanings as provided in 21 U.S.C. 321.*

(10)(11) *“Poultry” means any domesticated bird, whether alive or dead.*

(11)(12) *“Prepared” means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.”*

Section 3. Section 81-9-220, MCA, is amended to read:

“81-9-220. Rules. The board, upon the recommendation of the chief, shall adopt rules consistent with the requirements of the rules of the U.S. department of agriculture governing meat inspection. The rules must:

(1) require antemortem and postmortem inspections, quarantines, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official establishments;

(2) require the identification of livestock and poultry and the marking and labeling of livestock or poultry products as “Montana Inspected and Passed” if they are found upon inspection not to be adulterated;

(3) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry products that have been found to be adulterated;

(4) set standards for ingredients of livestock products, meat, and poultry products;

(5) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;

(6) set standards for the weights or measures of meats, livestock products, and poultry products not inconsistent with standards established under Title 30, chapter 12;

(7) set standards for the filling of containers for meat, livestock products, and poultry products;

(8) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;

(9) provide for periodic investigations of the sanitary conditions of each official establishment and withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such as to render adulterated any meat products prepared or handled therein;

(10) prescribe sanitation requirements for all official establishments;

(11) require all persons subject to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to maintain full and complete records of all transactions involving meat, livestock products, or poultry products and to make the records available on request to the chief or his inspectors at any reasonable time; and

(12) prescribe additional standards, methods, and procedures as are necessary to effect the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236; and

(13) provide for the licensing and inspection of mobile slaughter facilities to ensure that the requirements of this part are met with respect to all operations conducted at mobile slaughter facilities.”

Section 4. Section 81-9-227, MCA, is amended to read:

“81-9-227. Application for state meat inspection service — assignment of establishment number. (1) Any meat establishment or mobile slaughter facility operator licensed under 81-9-201 may apply to the board for state meat and poultry inspection service. The application must include:

(a) the name and address of the establishment or, in the case of a mobile slaughter facility, the name and address of the owner of the mobile slaughter facility and a description of any mobile unit to be used as part of the mobile slaughter facility;

(b) the type of establishment, whether mobile or in a fixed location;

(c) a complete description of the facilities and equipment;

(d) the day of the week and hours of the day when the establishment is in operation; and

(e) other information required by the chief.

(2) (a) The chief, upon receipt of the application, shall inspect the applicant’s facilities and equipment, including any mobile unit to be used as part of a mobile slaughter facility. If the establishment or mobile slaughter facility is found to be clean and sanitary and if it meets the requirements of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the board shall authorize the granting of state meat inspection service to the applicant. The board shall then assign an official establishment number to the approved establishment or mobile slaughter facility to be used to mark the meat of the carcasses and parts of carcasses that are offered for sale.

(b) *In the case of mobile slaughter facilities, a separate establishment number is required for each mobile unit owned and operated by the applicant. The board shall assign an official establishment number to each approved mobile unit, which must be used to mark the meat of carcasses and parts of carcasses that are offered for sale from that mobile unit.*

Section 5. Section 81-9-228, MCA, is amended to read:

“81-9-228. Inspection stamps. (1) The board shall provide meat inspection stamps to all official establishments, *including mobile slaughter facilities*, which must contain the words “Montana Inspected and Passeded”. The inspection stamps must be designed by the board so as to be not in conflict with inspection stamps of the U.S. department of agriculture.

(2) Approved official establishments may use symbols of the inspection stamps on the processed meats and meat food products they offer for sale if they are in compliance with the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(3) The meat inspection stamps must at all times be under the jurisdiction of the chief.”

Section 6. Restricted appropriation. There is appropriated \$46,289 in fiscal year 2006 and \$42,605 in fiscal year 2007 from the general fund to the department of livestock in order to implement the provisions of the mobile slaughter facility licensing program created in [this act]. This appropriation is a restricted appropriation, as that term is described in [section 4] of House Bill No. 2.

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 495

[HB 502]

AN ACT REMOVING THE REQUIREMENT THAT FINGERPRINTS BE SUBMITTED AND A BACKGROUND CHECK BE CONDUCTED WITH RESPECT TO A MANAGER OF A FACILITY FOR WHICH AN APPLICATION FOR A BEER AND WINE LICENSE FOR OFF-PREMISES CONSUMPTION IS BEING SOUGHT; CLARIFYING THE REQUIREMENT FOR ADDITIONAL FINGERPRINTING AND BACKGROUND CHECKS WITH RESPECT TO A LICENSE FOR OFF-PREMISES CONSUMPTION; AMENDING SECTION 16-4-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-4-414, MCA, is amended to read:

“16-4-414. Fingerprints required of applicants — exceptions. (1) ~~An~~ Except as provided in subsections (2) and (3), an applicant for a license under this code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the

investigation must be used by the department in determining the applicant's eligibility for a license.

(2) (a) *When the applicant is seeking a license for off-premises consumption, the following persons are subject to the fingerprint and background check described in subsection (1):*

(i) *the applicant;*

(ii) *a person designated by the applicant as responsible for operating the licensed establishment on behalf of the licensee; or*

(iii) *if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director responsible for operating the licensed establishment.*

(b) *Additional fingerprint and background checks may be required at renewal only for new persons described in subsection (2)(a).*

(c) *A change in the form of a licensee's business entity that does not result in any person having a new ownership interest in the business is not grounds for the department to require a fingerprint or background check.*

(3) *When the applicant is seeking a license for off-premises consumption, a person employed by the applicant as a manager is not subject to the fingerprint and background check described in subsection (1)."*

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

Approved April 28, 2005

CHAPTER NO. 496

[HB 512]

AN ACT APPROPRIATING UP TO \$1.1 MILLION OF FEDERAL FUNDS TO THE DEPARTMENT OF TRANSPORTATION FOR LOCAL RAIL FREIGHT ASSISTANCE PROGRAMS; AMENDING SECTIONS 60-11-111 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation. Federal funds received for local rail freight assistance programs under former 49 U.S.C. 1654 in an amount up to \$1.1 million are appropriated to the department of transportation for the biennium beginning July 1, 2005, to be used for the purposes provided in 60-11-120(2)(a) or in former 49 U.S.C. 1654.

Section 2. Section 60-11-111, MCA, is amended to read:

"60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation. (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements in the lines.

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine

the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in 60-11-120.

(3) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

(c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (3)(a) and:

(i) hold all acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (3)(c);

(d) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of abandoned railbeds; and

(e) shall establish procedures, including the use of federal funds received for rail freight assistance programs under *former* 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(c)(i) must be administered by the department of natural resources and conservation, as prescribed in Title 77, until the land is needed for transportation purposes.”

Section 3. Section 60-11-120, MCA, is amended to read:

“60-11-120. Railroad and intermodal transportation facility loans and grants — authorization — eligibility. (1) Money appropriated by the legislature may be used by the department ~~of transportation~~, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for the preservation and continued operation of railroad branch lines identified in 60-11-111 and for the development and improvement of intermodal transportation facilities *except as prohibited by federal law*. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the state general fund *except as required by federal law*.

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan or grant under this section if the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan or grant under this section for the development or improvement of an intermodal transportation facility under this section if:

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the intermodal transportation facility for which a loan or grant is sought is integrally related to the railroad transportation system of the state.”

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 497

[HB 530]

AN ACT DESIGNATING MILES CITY AS A CULTURAL HERITAGE AREA; AMENDING SECTION 60-2-220, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 60-2-220, MCA, is amended to read:

“60-2-220. ~~Butte-Anaconda cultural~~ Cultural heritage area — signs — location and design — funding. (1) ~~There is established a~~ A cultural heritage area *is established:*

(a) encompassing Silver Bow County and Deer Lodge County;

(b) *encompassing Miles City.*

(2) Subject to the provisions of federal law, the department shall, as funds are available under subsection (4), erect and maintain at specified locations on the primary and interstate highways in ~~Silver Bow County and Deer Lodge County~~ signs identifying those counties *the appropriate areas signs identifying those areas* as a cultural heritage area.

(3) The consolidated governments of Butte-Silver Bow and Anaconda-Deer Lodge *and the city of Miles City* shall design the signs and designate the general locations for the signs. The department shall determine the exact location of each sign.

(4) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsections (2) and (3) and may expend the money received for those purposes.

(5) As used in this section, “department” means the department of transportation provided for in 2-15-2501.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 498

[HB 537]

AN ACT PROHIBITING THE ADVERSE USE OF INQUIRIES REGARDING INSURANCE COVERAGE; AMENDING SECTION 33-15-1105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 33-15-1105, MCA, is amended to read:

“33-15-1105. Nonrenewal — renewal premium. (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 45 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of the intention not to renew. The insurer shall also mail or deliver a copy to the insured’s insurance producer.

(b) Notification or nonrenewal to the insured’s insurance producer via electronic transfer of data or by *an* electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured’s renewal, that a single loss is among the insurer’s criteria for nonrenewal.

(5) (a) *For the purposes of this subsection (5), the following definitions apply:*

(i) *“Claim” means a contact with an insurer by an insured or third party for the purpose of seeking payment. An inquiry into coverage on a property and casualty insurance policy is not claim activity unless:*

(A) *a payment is made;*

(B) *a reserve is established or loss adjustment expenses are incurred; or*

(C) *a written, formal denial of the claim is issued to the insured or claimant.*

(ii) *“Inquiry” means a request for information regarding the terms, conditions, or coverages offered under a property and casualty insurance policy that does not result in a claim.*

(b) *An insurer may not use a direct or indirect inquiry as the basis for declining or not renewing insurance coverage or a binder of insurance coverage or for increasing the insurance premium.*

(c) *An inquiry may not be considered a claim under 33-18-201.*

(d) *An insurer may not submit to any insurance support organization or consumer reporting agency an insured’s name if the insured made an inquiry about terms or coverage of an insurance policy.”*

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 499

[HB 540]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR COLLEGES OF TECHNOLOGY AND OTHER CAPITAL PROJECTS; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. For the purposes of [sections 1 through 6], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, equipping, furnishing, or major repair projects authorized in [sections 1 through 6].

(2) "CPF" means the capital projects fund.

Section 2. Appropriation of bond proceeds. (1) The following money is appropriated from the CPF from the proceeds for the bonds authorized by [section 3] to the department of administration for the capital projects described in this section, contingent upon the authorization of general obligation bonds by the 59th legislature and the sale of bonds by the board of examiners:

Agency/Project

MONTANA HISTORICAL SOCIETY

Montana Historical Society Building	\$7,500,000
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MONTANA UNIVERSITIES AND COLLEGES

Montana State University

Great Falls College of Technology	11,000,000
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Billings College of Technology	9,000,000
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University of Montana

Helena College of Technology	7,500,000
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Montana Tech of the University of Montana

Petroleum Building	9,000,000
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Gaines Hall Renovation, Phase I	3,500,000
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MSUAES Projects	500,000
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(2) The following money is appropriated from the CPF from the proceeds for the bonds authorized by [section 3] to the department of natural resources and conservation for the capital projects described in this section, contingent upon the authorization of general obligation bonds by the 59th legislature and the sale of bonds by the board of examiners:

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

St. Mary Water Project — State Support	10,000,000
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State Cost Share — Fort Belknap Water Compact	9,500,000
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Section 3. Authorization of bonds — condition. (1) Subject to subsection (2), the board of examiners is authorized to issue and sell general

obligation bonds in an amount not exceeding \$68 million for the capital projects described in [section 2] over and above the amount of general obligation bonds outstanding on January 1, 2005. The bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation bonds.

(2) The sale of bonds and the appropriation in [section 2] of bond proceeds for the St. Mary water project are contingent upon the receipt of the federal cost-share for the project.

Section 4. Planning and design. The department of administration and department of natural resources and conservation may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The departments may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 5. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 6. Legislative consent. The appropriations authorized in [section 2] constitute legislative consent for the capital projects contained in [section 2] within the meaning of 18-2-102.

Section 7. Requirement for approval of state debt. Because [section 3] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 3]. If [section 3] is not approved by the required vote, [this act] is void.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

Approved April 28, 2005

CHAPTER NO. 500

[HB 541]

AN ACT REVISING THE REGISTRATION OF CERTAIN MOTOR HOMES; ALLOWING MOTOR HOMES 11 YEARS OLD AND OLDER TO BE PERMANENTLY REGISTERED; ESTABLISHING THE PERMANENT REGISTRATION FEE; PROVIDING THAT CERTAIN FEES FOR PERMANENT REGISTRATION ARE FIVE TIMES THE EXISTING FEES; AMENDING SECTIONS 15-1-122, 19-6-709, 61-3-303, 61-3-321, 61-3-332, 61-3-479, AND 61-3-522, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 15-1-122, MCA, is amended to read:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) ~~\$75,000 in fiscal year 2003;~~

(b) ~~\$0 in fiscal years 2004 and 2005;~~

(e) \$3,050,205 in fiscal year 2006; and

(~~d~~)*(b)* in each succeeding fiscal year, the amount in subsection (~~2~~)*(e)* (~~2~~)*(a)*, increased by 1.5% in each succeeding fiscal year.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered *motor home under 61-3-522(3) or light vehicle under 61-3-562*;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 in fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 in fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for

enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-522(3), 61-3-527, 61-3-530, and 61-3-562;

(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;

(g) to the search and rescue account provided for in 10-3-801:

(i) \$2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;

(ii) \$2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and

(iii) \$2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803; and

(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in

subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to *61-3-522(3) and 61-3-562*. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

Section 2. Section 19-6-709, MCA, is amended to read:

“19-6-709. (Temporary) Supplemental benefits for certain retirees.

(1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) The amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), *61-3-522(3)(b)*, 61-3-527(4), and 61-3-562(1)(b) must be distributed proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)”

Section 3. Section 61-3-303, MCA, is amended to read:

“61-3-303. Registration — process — fees. (1) A Montana resident who owns a motor vehicle operated or driven upon the public highways of this state shall register the motor vehicle in the office of the county treasurer in the county where the owner permanently resides or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the county where the vehicle is permanently assigned.

(2) (a) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(i) as of the date that the vehicle 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

(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.

(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.

(3) (a) A county treasurer shall register a motor vehicle 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 vehicle 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 for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

(5) A person who seeks to register a motor vehicle, except a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of \$1 or more if the person has indicated on the application 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

(d) a donation of \$1 or more if the person has indicated on the application 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 vehicle to the owner unless the owner makes the payments required by subsection (5). Except as provided in 61-3-522(3), 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) except as provided in subsection (9), the immediately preceding year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(7) The department may make full and complete investigation of the registration status of the vehicle. A person seeking to register a motor vehicle 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)(c) must be forwarded by the respective county treasurer to the department of revenue 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, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the vehicle is owned by the same person who registered the vehicle. Once registered, a vehicle described in this subsection (9)(a) is registered permanently unless ownership of the vehicle is transferred.

(b) Whenever ownership of a vehicle described in subsection (9)(a) is transferred, the new owner is required to register the vehicle 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)(d) must be forwarded by the respective county treasurer to the department of revenue 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.”

Section 4. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles — 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, reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, \$13.75 in calendar year 2004 and, in each subsequent year, \$17;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(c) motor vehicles registered pursuant to 61-3-411 that are:

- (i) 2,850 pounds and over, \$10; and
- (ii) under 2,850 pounds, \$5;

(d) off-highway vehicles registered pursuant to 23-2-817, ~~\$9 in calendar year 2004 and, in each subsequent year, \$19.25.~~ This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, ~~\$18.75 in calendar year 2004 and, in each subsequent year, \$22;~~

(f) logging trucks less than 1 ton, \$23.75;

(g) motor homes, \$22.25;

(h) motorcycles and quadricycles, \$9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, ~~\$9.75 in calendar year 2004 and, in each subsequent year, \$11.25.~~ This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(k) travel trailers, \$11.75. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(l) recreational vehicles, ~~\$3.50 in calendar year 2004 and, in each subsequent year, \$9.75.~~ If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(2) (a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.

(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.

(3) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, ~~\$5 in calendar year 2004 and, in each subsequent year,~~ \$16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of \$5 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) 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, 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.

(6) (a) Except as provided in *61-3-522(3)* and 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) (a) Except as provided in *61-3-522(3)*, 61-3-562, and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.

(b) The following vehicles are not subject to the fee:

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(ii) off-highway vehicles registered pursuant to 23-2-817; and

(iii) vehicles bearing license plates described in 61-3-458(3)(d).

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(10) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(11) (a) Unless a person exercises the option in subsection (11)(b), an additional fee of \$4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. The fee must be deposited in the state general fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(c)(vii).

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (11)(a). If a written election is made, the fee may not be collected."

Section 5. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (3)(b), (4)(c), and (4)(d) of this section, all number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, 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 61-3-522(3), 61-3-527 or 61-3-315, and 61-3-562 and vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered vehicle.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new number plates after the existing plates have been used for a minimum period of 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A light vehicle described in subsection (3)(b) *of this section or a motor home* that is permanently registered may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) For passenger vehicles and trucks, 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 the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers 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, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the 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.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles 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 vehicles 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 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 number 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 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 number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) 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.

(10) 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 (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the vehicle, and must be removed upon sale or other disposition of the vehicle.

(11) 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. If the vehicle to which the license plate is attached is permanently registered, the owner of the vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the vehicle.

(12) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer 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 6. Section 61-3-479, MCA, is amended to read:

“61-3-479. Issuance of generic specialty license plates — qualifications. (1) (a) Except as provided in subsection (1)(b), the department shall issue a set of generic specialty license plates to a person who applies for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the department of revenue and required under 15-1-504 as of the initial distribution date for the sale of the sponsor’s plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor’s generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

(2) A set of generic specialty license plates may be issued for any vehicle, except a trailer of any size, a motorcycle, or a quadricycle.

(3) (a) Except as provided in 61-3-472 through 61-3-481, *61-3-522(3)*, and 61-3-562, a person who receives generic specialty license plates is subject to the same rules and laws as those that govern number plates.

(b) Except as provided in 61-3-472 through 61-3-481, *61-3-522(3)*, and 61-3-562, the department is subject to the same rules and laws that govern the issuance of number plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to any maximum issuance or use limitation that may be imposed on number plates.

(4) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(11)."

Section 7. Section 61-3-522, MCA, is amended to read:

"61-3-522. Schedule of fees for motor homes — permanent registration — transfer of ownership. (1) The owner of a motor home shall pay a *registration* fee based on the age of the motor home according to the following schedule:

less than 2 years old	\$250
2 years old and less than 3 years old	230
3 years old and less than 4 years old	195
4 years old and less than 5 years old	150
5 years old and less than 6 years old	125
6 years old and less than 7 years old	100
7 years old and less than 8 years old	75
8 years old and older.....	65

(2) (a) Except as provided in subsection (2)(b), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(3) (a) *The owner of a motor home 11 years old or older subject to the registration fee under subsection (1) may permanently register the motor home upon payment of a \$195 registration fee, the applicable registration and license fees under 61-3-321 and 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:*

(i) *weed control fees under 15-1-122(3)(b);*

(ii) *the county motor vehicle computer fees under former 61-3-511;*

(iii) *if applicable and subject to subsection (3)(c), special license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; and*

(iv) *senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).*

(b) *A person who permanently registers a motor home as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (3)(b) from each motor home registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.*

(c) *The following series of license plates may not be used for purposes of permanent registration of a motor home:*

(i) *Montana national guard license plates issued under 61-3-458(2)(b);*

(ii) *reserve armed forces license plates issued under 61-3-458(2)(c);*

(iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);

(iv) amateur radio operator license plates issued under 61-3-422;

(v) collegiate license plates issued under 61-3-465; and

(vi) generic specialty license plates issued under 61-3-479.

(4) The owner of a motor home that is permanently registered under this section is not subject to additional registration fees under subsection (1) or to other motor vehicle registration fees described in this section for as long as the owner owns the motor home.

(5) The county treasurer shall:

(a) distribute the \$195 registration fee collected under this section as provided in 61-3-509;

(b) remit to the department of revenue the amounts collected under this section for the purposes of 15-1-122(3).

(6) (a) The permanent registration of a motor home allowed by this section may not be transferred to a new owner. If the motor home is transferred to a new owner, the department shall cancel the motor home's permanent registration.

(b) Upon transfer of a motor home registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and file an application for registration under 61-3-303."

Section 8. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved then [sections 1 through 4, 6, and 7 of this act] are void and the following must be inserted into 61-3-321(7), the fee schedule for motor homes, as amended by Senate Bill No. 285:

"(c) (i) The owner of a motor home 11 years old or older subject to the registration fee under subsection (7)(a) may permanently register the motor home upon payment of:

(A) a fee of \$237.50; and

(B) if applicable, five times the personalized license plate fees under 61-3-406.

(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

(A) Montana national guard license plates issued under 61-3-458(2)(b);

(B) reserve armed forces license plates issued under 61-3-458(2)(c);

(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11);

(D) amateur radio operator license plates issued under 61-3-422;

(E) collegiate license plates issued under 61-3-465; and

(F) generic specialty license plates issued under 61-3-479.

(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner."

Section 9. Effective date. [This act] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 501

[HB 550]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR HOLDING A MONTANA YOUTH LEADERSHIP FORUM FOR STUDENTS WITH DISABILITIES, INCLUDING INDIAN STUDENTS ON MONTANA RESERVATIONS.

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

Section 1. Appropriation. There is appropriated \$50,000 from the state general fund to the department of public health and human services for each of the fiscal years 2006 and 2007. The department shall use the appropriation for a grant or to fund a contract to hold a Montana youth leadership forum for students with disabilities, including Indian students on Montana reservations.

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.

Approved April 28, 2005

CHAPTER NO. 502

[HB 552]

AN ACT PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM APPLYING FINANCIAL CRITERIA BELOW \$15,000 FOR RESOURCES OTHER THAN INCOME IN DETERMINING THE ELIGIBILITY OF CHILDREN UNDER THE POVERTY LEVEL-RELATED CHILDREN'S MEDICAID COVERAGE GROUPS; PROVIDING AN APPROPRIATION; AMENDING SECTION 53-6-113, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 53-6-113, MCA, is amended to read:

“53-6-113. Department to adopt rules. (1) The department of public health and human services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and that may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules that are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;

- (b) the actual cost of services;
- (c) the quality of services;
- (d) the professional knowledge and skills necessary for the delivery of services; and
- (e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq. *The department may not apply financial criteria below \$15,000 for resources other than income in determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage groups, as provided in 42 U.S.C. 1396a(l)(1)(B) through (l)(1)(D).*

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed care systems. Rules to be adopted may include but are not limited to rules concerning:

- (a) participation in managed care;
- (b) selection and qualifications for providers of managed care; and
- (c) standards for the provision of managed care.

(9) ~~The~~ *Subject to subsection (6), the* department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature.”

Section 2. Appropriation. There is appropriated \$1,876,316 from the health and medicaid initiatives state special revenue account in 53-6-1201 to the department of public health and human services for fiscal year 2007 for the purposes of providing medicaid services to children under 19 years of age for whom the department may not apply financial criteria, as provided in 53-6-113(6).

Section 3. Effective date. [This act] is effective July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 503

[HB 574]

AN ACT AUTHORIZING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO ISSUE BONDS UPON APPROVAL OF A BOND PROPOSITION BY A MAJORITY VOTE OF THE ELECTORATE AT CERTAIN ELECTIONS; AMENDING SECTIONS 20-6-206, 20-6-318, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 20-6-206, MCA, is amended to read:

“20-6-206. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election involving the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, ~~shall~~ *must* comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots ~~shall~~ *must* read, after stating the consolidation proposition, “FOR consolidation with assumption of bonded indebtedness” and “AGAINST consolidation with assumption of bonded indebtedness”.

(2) In an annexation election the ballots ~~shall~~ *must* read, after stating the annexation proposition, “FOR annexation with assumption of bonded indebtedness” and “AGAINST annexation with assumption of bonded indebtedness”.

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of 20-20-415, they shall ~~decide, according to the following procedure, if the proposition has been approved:~~

~~(a) determine if a sufficient number of the qualified electors of the district have voted to validate the election and have voted to approve the election proposition in the same manner required for bond elections by 20-9-428; and~~

~~(b) when the proposition is approved under subsection (4)(a), determine the number of votes “FOR” and “AGAINST” the proposition.~~

(5) The proposition ~~shall be~~ *is* approved in the district if a majority of those voting approve the proposition. ~~If the proposition is disapproved under either the provisions of subsection (4)(a) or (4)(b), the proposition shall be disapproved in the district.”~~

Section 2. Section 20-6-318, MCA, is amended to read:

“20-6-318. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in 20-6-315 or an annexation election involving the joint assumption of bonded indebtedness by the high school districts to be annexed as prescribed in 20-6-317 must comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each high school district conducting an election canvass the vote under the provisions of 20-20-415, they shall ~~decide according to the following procedure if the proposition has been approved:~~

~~(a) determine if a sufficient number of the qualified electors of the district voted to validate the election and voted to approve the election proposition in the manner required for bond elections by 20-9-428; and~~

~~(b) if the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.~~

~~(5) If the proposition is disapproved under the provisions of subsection (4)(a) receives a majority of the votes cast on the issue, the proposition is disapproved approved in the district."~~

Section 3. Section 20-9-428, MCA, is amended to read:

"20-9-428. Determination of approval or rejection of proposition at bond election. (1) ~~When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:~~

~~(a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;~~

~~(b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;~~

~~(c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and~~

~~(d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or~~

~~(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or~~

~~(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected~~ *When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:*

(a) If the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:

(i) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;

(ii) determine the total number of qualified electors voting at the school bond election from the tally sheets for the election;

(iii) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i); and

(iv) when the calculated percentage in subsection (1)(a)(iii) is 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise, it is rejected; or

(v) when the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise, it is rejected; or

(vi) when the calculated percentage in subsection (1)(a)(iii) is 30% or less, the school bond proposition is rejected.

(b) If the school district bond election is held at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of ~~such~~ the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for ~~such~~ the school district bond election.”

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to school bond elections held on or after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 504

[HB 577]

AN ACT APPROPRIATING MONEY TO THE OFFICE OF RESTORATIVE JUSTICE IN THE DEPARTMENT OF JUSTICE TO BE USED FOR COSTS FOR SEXUAL ASSAULT FORENSIC EXAMS FOR SEXUAL ASSAULT VICTIMS; AMENDING SECTIONS 2-15-2014 AND 46-15-411, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation. There is appropriated \$61,000 from the general fund to the department of justice for the office of restorative justice to be used to cover the costs of providing sexual assault forensic exams for sexual assault victims as provided in 46-15-411. This is a biennial appropriation.

Section 2. Section 2-15-2014, MCA, is amended to read:

“2-15-2014. Restorative justice fund created — source of funding — use of fund. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the restorative justice fund.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money from a state or local agency for the purposes of 2-15-2013; ~~and~~

(c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of 2-15-2013; *and*

(d) *money received by the department of justice for the purpose of administering 46-15-411(2).*

(3) ~~The~~ *Except as provided in subsection (2)(d), the fund may be used only to provide grants for restorative justice programs as provided in 2-15-2013 to community-based, including faith-based, organizations."*

Section 3. Section 46-15-411, MCA, is amended to read:

"46-15-411. Payment for medical evidence — *alleged sexual offenses.*

(1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the medical examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.

(2) (a) *The office of restorative justice in the department of justice shall, as long as funds are available from an appropriation made for this purpose, pay for the medical examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest if the cost is not the responsibility of a local law enforcement agency under subsection (1).*

(b) *In administering the provisions of subsection (2)(a), the office of restorative justice shall:*

(i) *identify priorities for funding services, activities, and criteria for the receipt of program funds;*

(ii) *monitor the expenditure of funds by organizations receiving funds under this section;*

(iii) *evaluate the effectiveness of services and activities under this section;*
and

(iv) *adopt rules necessary to implement this subsection (2).*

~~(2)~~(3) This section does not require a law enforcement agency or the state to pay any costs of treatment for injuries resulting from the alleged offense."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 505

[HB 606]

AN ACT REQUIRING CERTAIN SMALL MINERS WHO INTEND TO USE AN IMPOUNDMENT TO STORE WASTE FROM ORE PROCESSING TO OBTAIN APPROVAL FOR THE DESIGN, CONSTRUCTION, OPERATION, AND RECLAMATION OF AN IMPOUNDMENT FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO POST A PERFORMANCE BOND; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 82-4-305, MCA, is amended to read:

“82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through ~~(10)~~ (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner’s mining operations. The map must be of a size and scale determined by the department.
- (d) if the small miner’s operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

- (a) if the small miner is an individual, that:
 - (i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and
 - (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or
- (b) if the small miner is a partnership or business association, that:
 - (i) none of the associates or partners holds a small-miner exemption; and
 - (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or
- (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:
 - (i) holds a small-miner exemption;
 - (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;
 - (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state’s documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of

the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) 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 in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(15)(a)(i) and (15)(a)(ii).

(8) (a) *Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).*

(b) *The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an*

impoundment to store waste from ore processing is included in the 5-acre limit specified in 82-4-303(15)(a)(i) and (15)(a)(ii) and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation with 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after [the effective date of this act] shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of [the effective date of this act]. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

~~(8)(9)~~ The exemption provided in this section does not apply to a person:

(a) whose failure 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 the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who 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.

~~(9)~~(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

~~(10)~~(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment.”

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

Approved April 28, 2005

CHAPTER NO. 506

[HB 615]

AN ACT CREATING AN ENVIRONMENTAL VIOLATIONS INVESTIGATION AND PROSECUTION AUTHORITY IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Environmental violations investigation and prosecution — authority. The department of justice, at the request of the department of environmental quality, shall investigate and prosecute violations of the provisions of Title 75 and may also assist county attorneys in investigating and prosecuting violations of the provisions of Title 75 without charge to the county.

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

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 507

[HB 645]

AN ACT REVISING LAWS GOVERNING SPECIAL LICENSE PLATES FOR PERMANENTLY DISABLED PERSONS; ALLOWING A PERSON WHO HAS A PERMANENT DISABILITY THAT MEETS CERTAIN CRITERIA TO

CONTINUE TO DISPLAY A SPECIAL LICENSE PLATE BEARING THE SYMBOL OF A WHEELCHAIR UPON VEHICLE REREGISTRATION WITHOUT SUBMITTING AN ADDITIONAL APPLICATION; AMENDING SECTIONS 49-4-301 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 49-4-301, MCA, is amended to read:

“49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person’s mobility and who, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, meets one of the following criteria:

- (a) cannot walk 200 feet without stopping to rest;
- (b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;
- (c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) uses portable oxygen;
- (e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- (f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person’s functional limitations are classified as class III or IV under standards accepted by the American heart association; or
- (g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person’s mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under 61-3-332(11). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant’s physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a new certification from the disabled person’s physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) *A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, upon written application on a form prescribed by the department of justice, be issued a special license plate under 61-3-332(11) and is not required to reapply for the special license plate when the vehicle is reregistered.*

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a

disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

Section 2. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (3)(b), (4)(c), and (4)(d) of this section, all number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, 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 61-3-527 or 61-3-315 and 61-3-562 and vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered vehicle.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new number plates after the existing plates have been used for a minimum period of 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A light vehicle described in subsection (3)(b) that is permanently registered may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) For passenger vehicles and trucks, 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 the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers 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, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the 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.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles 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 vehicles 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 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 number 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 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 number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) 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.

(10) 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 (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the vehicle, and must be removed upon sale or other disposition of the vehicle.

(11) (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 vehicle to which the license plate is attached is permanently registered, the owner of the vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the vehicle.

(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 (11), is not required to reapply upon reregistration of the vehicle or upon transfer of the special plate as provided in subsection (8).*

(12) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer 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. Coordination instruction. If both House Bill No. 671 and [this act] are passed and approved, then 49-4-301 must be amended as follows:

“49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person’s mobility and ~~who, as determined by~~ *for whom* a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, *submits a certification to the department, by electronic or other means*

prescribed by the department, that the person meets one of the following criteria:

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under ~~61-3-332(11)~~ 61-3-332(9). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a ~~new~~ *later paper or electronic* certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) *A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, by application to the department, by electronic or other means prescribed by the department, be issued a special license plate under 61-3-332(9) and is not required to reapply for the special license plate when the vehicle is reregistered.*

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

Section 4. Coordination instruction. If both House Bill No. 671 and [this act] are passed and approved, then the code commissioner shall change all of the references to vehicle in subsection (11)(c) of 61-3-332 in [this act] to references to motor vehicles.

Section 5. Effective date. [This act] is effective January 1, 2006.

Approved April 28, 2005

CHAPTER NO. 508

[HB 652]

AN ACT ALLOWING A SCHOOL DISTRICT TO EXTEND A BUS ROUTE ACROSS ANOTHER SCHOOL DISTRICT IN ORDER TO PROVIDE TRANSPORTATION TO STUDENTS WITHIN ITS OWN DISTRICT; AMENDING SECTION 20-10-126, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-10-126, MCA, is amended to read:

“20-10-126. Establishment of transportation service areas. (1) The territory of a transportation service area is the territory of a school district unless the county transportation committee approves alternative boundaries after determining that the adjustments will improve pupil safety, transportation efficiency, or the cost-effectiveness of the pupil transportation system of the county.

(2) (a) *Except as provided in subsection (2)(b), a district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils.*

(b) *A district may extend a bus route across another transportation service area if the district determines that it is necessary in order to provide transportation to pupils in the district's own transportation service area. Under this subsection (2)(b), a district may not transport pupils from outside its transportation service area.*

(3) When the trustees of two or more districts enter into a written agreement to authorize transportation services among transportation service areas, a copy of the agreement must be submitted to the county superintendent and approved by the county transportation committee. Upon approval by the committee, the transportation agreements are valid for the current school year.

(4) The trustees of any district who object to a particular bus route or transportation service area to which the district has been assigned may request a transfer to another bus route or transportation service area. The county transportation committee may transfer the territory of the district to an adjacent transportation service area or approved bus route with the consent of the district providing transportation in the adjacent transportation service area.

(5) The trustees of any district who object to a bus route operated by another district may bring that route to the attention of the county transportation committee. If the committee agrees that the district is operating a portion of its route as an unapproved route outside of its district boundaries, the committee shall file with the district a written warning concerning the unapproved route, and if the district, in spite of the warning, continues to operate the route, the committee may withdraw its approval of the entire route.

(6) If the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of the district be transferred for pupil transportation purposes to the adjacent

transportation service area. If a satisfactory petition is presented to the trustees, the trustees shall call an election on the proposition in accordance with 20-20-201 for the next ensuing regular school election day. The election must be conducted in accordance with the school election laws. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

(7) Unless a transfer of territory from one transportation service area or approved bus route to another area or bus route is approved by the superintendent of public instruction and the county transportation committee, the state transportation reimbursement is limited to the reimbursement amount for pupil transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 509

[HB 678]

AN ACT REVISING LENGTH LIMITS ON TRIPLE-TRAILER TRUCK CONFIGURATIONS; 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), (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.

(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) ~~the combined trailer length may not exceed 95 feet~~ 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), (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.

(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) the combined trailer length may not exceed 95 feet~~ *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)~~ *(d)* an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

~~(d)~~ *(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;

~~(e)~~ *(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;

~~(f)~~ *(g)* travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

~~(g)~~ *(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 April 28, 2005

CHAPTER NO. 510

[HB 681]

AN ACT REVISING THE LAWS ON SCHOOL DISTRICT CONSOLIDATION AND ANNEXATION; ESTABLISHING A SINGLE PROCEDURE FOR THE ANNEXATION AND CONSOLIDATION OF SCHOOL DISTRICTS; PROVIDING FOR AN INTERIM BOARD OF TRUSTEES FOLLOWING PASSAGE OF A CONSOLIDATION ELECTION; CLARIFYING THAT DISTRICTS MAY CONSOLIDATE OR ANNEX ACROSS COUNTY LINES; REQUIRING A RESOLUTION OR PETITION FOR CONSOLIDATION OR ANNEXATION TO STATE WHETHER OR NOT THE CONSOLIDATION OR ANNEXATION WILL OCCUR WITH ASSUMPTION OF BONDED INDEBTEDNESS; REQUIRING A CONSOLIDATION ELECTION TO BE HELD NO LATER THAN DECEMBER 31 PRECEDING THE SCHOOL FISCAL YEAR IN WHICH THE CONSOLIDATION IS TO BECOME EFFECTIVE; CLARIFYING THAT A CONSOLIDATION OR ANNEXATION IS EFFECTIVE JULY 1 FOLLOWING AN ELECTION; CLARIFYING THAT CONSOLIDATION OR ANNEXATION MUST OCCUR WITH CONTIGUOUS DISTRICTS; CLARIFYING THE PROCEDURE FOR DETERMINING APPROVAL OF A CONSOLIDATION OR ANNEXATION WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ALLOWING AN ABANDONED DISTRICT TO ATTACH TO A CONTIGUOUS DISTRICT IN AN ADJACENT COUNTY; ALLOWING FOR THE CONSOLIDATION AND ANNEXATION OF K-12 DISTRICTS; ALLOWING DISTRICTS TO CONSOLIDATE ACROSS COUNTY LINES WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ELIMINATING THE SPECIAL PROCEDURES FOR THE CONSOLIDATION, ABANDONMENT, AND DISSOLUTION OF JOINT DISTRICTS; ELIMINATING THE SEPARATE PROCEDURES FOR THE ANNEXATION AND CONSOLIDATION OF ELEMENTARY AND HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 20-3-205, 20-3-302, 20-3-312, 20-6-209, 20-6-307, 20-6-704, AND 20-9-311, MCA; REPEALING SECTIONS 20-6-203, 20-6-204, 20-6-205, 20-6-206, 20-6-207, 20-6-208, 20-6-210, 20-6-211, 20-6-315, 20-6-316, 20-6-317, 20-6-318, 20-6-319, AND 20-6-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee.

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

Section 1. Conditions for district annexation. (1) An elementary district may be annexed to a contiguous elementary district under the provisions of [section 2] when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, to a first-class district, or to a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or to a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) A high school district may be annexed to a contiguous high school district or a K-12 school district may be annexed to a contiguous K-12 school district under the provisions of [section 2] when:

(a) a third-class district is annexed to a first-class district or to a second-class district; or

(b) a second-class district is annexed to a first-class district.

Section 2. District annexation. (1) As used in this section, the following definitions apply:

(a) "Annexing district" means the district to which another district is being attached through an annexation procedure.

(b) "District to be annexed" means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of [section 1] is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located shall first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must

state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide, according to the following procedures, if the proposition has been approved:

(i) determine if a sufficient number of the qualified electors of the district have voted to validate the election in the same manner required for bond elections by 20-9-428; and

(ii) when the proposition is validated under the provisions of subsection (6)(b)(i), determine the number of votes "FOR" and "AGAINST" the proposition.

(c) If the proposition is validated and approved under the provisions of subsection (6)(b), the proposition is approved in the district.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without the assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in the annexed territory and in the annexing district. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county

involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition.

Section 3. District consolidation. (1) Any two or more contiguous elementary school districts may consolidate to organize an elementary district. Any two or more contiguous high school districts may be consolidated to organize a high school district. Any two or more contiguous K-12 school districts may be consolidated to organize a K-12 school district. The consolidation must be conducted as provided in this section.

(2) (a) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a consolidation proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a consolidation proposition involving their district.

(b) The resolution or petition must state whether the consolidation is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the consolidation. The resolution or petition from each district must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the consolidation proposition may not be considered further.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each district included in the consolidation proposition to call a consolidation election to be held no later than December 31 preceding the school year in which the consolidation is to become effective. If the districts involved in the consolidation proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be consolidated are to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide, according to the following procedure, if the proposition has been approved:

(i) determine if a sufficient number of the qualified electors of the district have voted to validate the election in the same manner required for bond elections by 20-9-428; and

(ii) when the proposition is validated under the provisions of subsection (5)(b)(i), determine the number of votes "FOR" and "AGAINST" the proposition.

(c) If the proposition is validated and approved under subsection (5)(b), the proposition is approved in the district.

(6) If the districts to be consolidated are not to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise, it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the consolidation proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, the appropriate county superintendent shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the consolidation of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for consolidation with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the consolidated district;

(ii) specify the number of the consolidated district; and

(iii) establish an interim board of trustees for the consolidated district as provided in [section 4]. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the consolidation proposition is located and to the trustees of each district incorporated in the consolidation order.

(8) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the consolidation proposition.

Section 4. Interim governance of consolidated district. (1) Upon passage of a consolidation proposition under the provisions of [section 3], an interim board of trustees made up of all of the members of the boards of trustees of the districts that consolidated shall serve as the trustees for the consolidated district from the date of the consolidation order until the newly elected board of the consolidated district is organized under 20-3-321. The interim board of trustees shall elect a presiding officer from among its members.

(2) The trustees of each district incorporated in the consolidation order shall continue to perform those duties related to the operation of their individual districts until the effective date of the consolidation. The interim board of

trustees shall perform those duties related to the formation of and transition to the consolidated district, including but not limited to:

(a) calling an election of the new board of trustees for the consolidated district to be held on the regular election day preceding the effective date of the consolidation; and

(b) if necessary, calling an election under 20-9-353 for the ensuing budget year of the consolidated district.

(3) At the next regular school election following the consolidation election, trustees for the consolidated district must be elected in accordance with the election provisions of Title 13 and Title 20. The term of office is 3 years, except that the initial terms of the newly elected trustees must be selected by lot in order to comply with the provisions of 20-3-302.

(4) The interim board of trustees must be dissolved upon the organization of the newly elected trustees pursuant to 20-3-321.

Section 5. 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:

~~(1)~~(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

~~(2)~~(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;

~~(3)~~(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;

~~(4)~~(d) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

~~(5)~~(e) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

~~(6)~~(f) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

~~(7)~~(g) keep a transcript of the district boundaries of the county;

~~(8)~~(h) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

~~(9)~~(i) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

~~(10)~~(j) 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;

~~(11)~~(k) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

~~(12)~~(l) 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;

~~(13)~~(m) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

~~(14)~~(n) 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;

~~(15)~~(o) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

~~(16)~~(p) 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;

~~(17)~~(q) 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;

~~(18)~~(r) 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;

~~(19)~~(s) 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;

~~(20)~~(t) 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;

~~(21)~~(u) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

~~(22)~~(v) 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;

~~(23)~~(w) administer the oath of office to trustees without the receipt of pay for administering the oath;

~~(24)~~(x) 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;

~~(25)~~(y) 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:

~~(a)~~(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

~~(b)~~(ii) the total receipts that were realized in each fund maintained by the district;

~~(c)~~(iii) the total expenditures that were made from each fund maintained by the district; and

~~(d)~~(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

~~(26)~~(z) 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 6. Section 20-3-302, MCA, is amended to read:

"20-3-302. Legislative intent to elect less than majority of trustees.

(1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. In elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In county high school districts, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) In the following circumstances relating to newly created trustee positions, the initial terms may be shortened to comply with the intent of subsection (1):

(a) the consolidation, *under the provisions of [section 3],* of two or more elementary districts to form an elementary district, ~~under the provisions of 20-6-203 or the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315,~~ or of two or more K-12 districts to form a K-12 district;

(b) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

(c) the change of a district's classification under the provisions of 20-6-201 or 20-6-301;

(d) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(e) the establishment of additional high school trustee positions under the provisions of 20-6-313.

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same

time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time.”

Section 7. Section 20-3-312, MCA, is amended to read:

“20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, ~~joint district dissolution~~, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts, shall continue to be the trustees of the district with the same powers, duties, and responsibilities and subject to the same limitations provided by law as if there had been no boundary change. In the case of elementary district consolidation, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of ~~20-6-203~~ [section 3].”

Section 8. Section 20-6-209, MCA, is amended to read:

“20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district *or districts* of the county *or, with the consent of the county superintendent of an adjacent county, to a contiguous district or districts in the adjacent county* when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days or a lesser number of days than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.”

Section 9. Section 20-6-307, MCA, is amended to read:

“20-6-307. High school district abandonment. Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county *or, with the consent of the county superintendent of an adjacent county, to another contiguous high school district or districts in the adjacent county.*”

Section 10. Section 20-6-704, MCA, is amended to read:

“20-6-704. Dissolution of K-12 school district. (1) Except as provided in subsection (2), in order to dissolve a K-12 district under the provisions of this section, the trustees of a district shall submit for approval to the electors of the K-12 district a proposition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district’s elementary or high school program with ~~an adjacent~~ *a contiguous* school district or districts in an ensuing school fiscal year under the provisions of ~~20-6-203 through 20-6-208 or 20-6-315 through 20-6-319~~ *[section 2 or 3]*.

(2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:

(a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.

(b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the district, and the superintendent of public instruction.

(3) If the entire territory of the dissolving K-12 district will be annexed *to* or consolidated with ~~an adjacent~~ *a contiguous* district or districts, the resolution or petition required in subsection (1) or (2) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation *to* or consolidation with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or consolidated with another district or districts, the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not ~~consolidated or~~ annexed *to or consolidated with* another district.

(4) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

(5) Whenever a K-12 district is dissolved, the following provisions apply:

(a) The trustees of the elementary district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).

(b) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

(c) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will be prorated based on rules promulgated by the superintendent of public instruction.”

Section 11. Section 20-9-311, MCA, is amended to read:

“20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the

district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of ~~20-6-203, 20-6-205, or 20-6-208~~, two or more high school districts consolidate or annex under the provisions of ~~20-6-315 or 20-6-317~~, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4 [section 2 or 3], the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.”

Section 12. Repealer. Sections 20-6-203, 20-6-204, 20-6-205, 20-6-206, 20-6-207, 20-6-208, 20-6-210, 20-6-211, 20-6-315, 20-6-316, 20-6-317, 20-6-318, 20-6-319, and 20-6-321, MCA, are repealed.

Section 13. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 6, part 4, and the provisions of Title 20, chapter 6, part 4, apply to [sections 1 through 4].

Section 14. Coordination instruction. If House Bill No. 574 and [this act] are both passed and approved, then [sections 2 and 3] of [this act] must read as follows:

“NEW SECTION. Section 2. District annexation. (1) As used in this section, the following definitions apply:

(a) “Annexing district” means the district to which another district is being attached through an annexation procedure.

(b) “District to be annexed” means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of [section 1] is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located shall first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, “FOR annexation with assumption of bonded indebtedness” and “AGAINST annexation with assumption of bonded indebtedness”.

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in the annexed territory and in the annexing district. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition."

"NEW SECTION. Section 3. District consolidation. (1) Any two or more contiguous elementary school districts may consolidate to organize an elementary district. Any two or more contiguous high school districts may be consolidated to organize a high school district. Any two or more contiguous K-12 school districts may be consolidated to organize a K-12 school district. The consolidation must be conducted as provided in this section.

(2) (a) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a consolidation proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a consolidation proposition involving their district.

(b) The resolution or petition must state whether the consolidation is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the consolidation. The resolution or petition from each district must agree on whether or not there will be joint assumption of

bonded indebtedness. Without agreement, the consolidation proposition may not be considered further.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each district included in the consolidation proposition to call a consolidation election to be held no later than December 31 preceding the school year in which the consolidation is to become effective. If the districts involved in the consolidation proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be consolidated are to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(6) If the districts to be consolidated are not to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the consolidation proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, the appropriate county superintendent shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the consolidation of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for consolidation with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the consolidated district;

(ii) specify the number of the consolidated district; and

(iii) establish an interim board of trustees for the consolidated district as provided in [section 4]. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the consolidation proposition is located and to the trustees of each district incorporated in the consolidation order.

(8) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the consolidation proposition.”

Section 15. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 511

[HB 687]

AN ACT GENERALLY REVISING THE TOBACCO LAWS; REQUIRING ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE TO COMPLY WITH ALL TOBACCO PRODUCT LAWS; APPOINTING THE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS FOR ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE; PROVIDING DEFINITIONS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR ENFORCEMENT OF CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; REVISING LAWS FOR CIGARETTE LICENSING TO INCLUDE LICENSING FOR SELLERS OF ALL TOBACCO PRODUCTS; REQUIRING COMMON CARRIERS TO REPORT SHIPMENTS OF TOBACCO PRODUCTS TO THE DEPARTMENT OF REVENUE; ALLOWING DEPARTMENT OF JUSTICE AGENTS TO ENFORCE BOTH TOBACCO TAX LAWS AND LAWS RELATED TO THE MASTER SETTLEMENT AGREEMENT; REQUIRING SUBJOBBER, TOBACCO PRODUCT VENDORS, AND RETAILERS TO MAINTAIN RECORDS RELATED TO TOBACCO PRODUCTS; ALLOWING THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF JUSTICE TO EXAMINE RECORDS RELATED TO TOBACCO PRODUCTS; PROVIDING FOR INDIVIDUAL LIABILITY FOR OFFICERS AND DIRECTORS OF ENTITIES THAT SELL TOBACCO PRODUCTS IN VIOLATION OF TOBACCO LAWS; REQUIRING TOBACCO PRODUCT SELLERS TO REPORT SALES TO MONTANA TAX AUTHORITIES; REQUIRING LABELING OF TOBACCO PRODUCTS SHIPPED INTO MONTANA; REVISING THE PENALTY FOR USING, CONSUMING, OR SELLING A PACK OF CIGARETTES THAT DOES NOT BEAR THE REQUIRED TAX INSIGNIA; ALLOWING SEIZURE OF CONTRABAND TOBACCO PRODUCTS BY DEPARTMENT OF JUSTICE AGENTS; REVISING THE FORFEITURE AND DESTRUCTION PROCEDURES FOR CONTRABAND; AUTHORIZING THE DEPARTMENT OF REVENUE TO ADOPT RULES THAT RELATE TO CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; GENERALLY REVISING THE PENALTIES FOR VIOLATIONS OF THE TOBACCO PRODUCT TAX LAWS; REQUIRING RETAILERS WHO PURCHASE TOBACCO PRODUCTS ON WHICH THE MONTANA TAXES HAVE NOT BEEN PAID TO PAY THE TAXES; PROVIDING FOR A RIGHT TO HEARING ON ACTIONS TAKEN TO ENFORCE THE TOBACCO PRODUCTS TAX LAWS; PROVIDING FOR

JURISDICTION FOR TAX VIOLATIONS; AMENDING SECTIONS 16-10-306, 16-11-102, 16-11-103, 16-11-104, 16-11-111, 16-11-114, 16-11-118, 16-11-119, 16-11-120, 16-11-122, 16-11-131, 16-11-132, 16-11-133, 16-11-141, 16-11-142, 16-11-143, 16-11-144, 16-11-145, 16-11-146, 16-11-147, 16-11-148, 16-11-149, 16-11-150, 16-11-155, 16-11-158, 16-11-507, AND 53-6-1201, MCA; REPEALING SECTIONS 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, AND 16-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Regular and systematic solicitation of business — compliance with chapter. Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner shall comply with all the requirements of this chapter and any rules adopted pursuant to this chapter.

Section 2. Secretary of state as process agent for unlicensed person doing business in state. Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner, without a license as required by this chapter, shall, by so doing, be considered to appoint the secretary of state as its agent upon whom all lawful process may be served. The secretary of state may be served with process issued within this state in any action or proceeding against the unlicensed person arising out of any contract or transaction. The regular and systematic solicitation of consumers in this state is considered to signify the person's assent to personal jurisdiction in the courts of this state and agreement that service of process on the secretary of state will have the same legal effect and validity as personal service of process upon the person in this state.

Section 3. Service of process. (1) Service of process pursuant to [section 2] must be made by delivering to and leaving with the secretary of state's office two copies of the summons and complaint and any fees required by law. The secretary of state shall, in a timely manner, mail by registered or certified mail one of the copies to the defendant at its last-known business address. The secretary of state shall keep the other copy as a record of the process served upon the secretary of state. The service of process is sufficient if a notice of service and a copy of the process are sent within 10 days after service by certified mail by the plaintiff's attorney to the defendant at its last-known principal place of business and if the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this section are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within a further time that the court may allow.

(2) Service of process in any action, suit, or proceeding, in addition to being made in the manner provided in subsection (1), must be considered valid if:

(a) served upon any person within this state on behalf of the person soliciting business who is:

(i) soliciting orders for sale of tobacco products;

(ii) making any contract for sale of tobacco products or delivering any tobacco products; or

(iii) collecting or receiving any money for tobacco products;

(b) a copy of the process is sent within 10 days after service, by certified mail, by the plaintiff's attorney to the defendant at the last-known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this subsection (2) are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within a further time that the court may allow.

(3) A plaintiff or complainant is not entitled to a judgment by default under this section until 30 days after the date of the filing of the affidavit of compliance.

(4) This section does not limit or abridge the right to serve any process, notice, or demand upon any tobacco product seller in any other manner now or later permitted by law.

Section 4. Joint and several liability. (1) An individual is individually liable, jointly and severally, with and to the same extent as the business, upon a determination that the individual possessed the responsibility on behalf of the business to comply or direct compliance with state law regarding sales of tobacco products if the individual is:

(a) a controlling person who directly or indirectly controls a business liable for a violation of the tax and directory requirements of this chapter; or

(b) a partner, officer, director, or person occupying a similar status or performing similar functions.

(2) For the purpose of determining liability for violations of the tax and directory requirements of this chapter, a member-managed limited liability company must be treated as a partnership with liability extending to each member who was a member at the time the violation occurred.

(3) For the purpose of determining personal liability for the failure to comply with the tax requirements of this chapter by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable along with the limited liability company for all penalties owed.

(4) For determining personal liability for the failure to comply with the tax requirements of this chapter, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for any penalties and interest due.

Section 5. Tobacco product sales reporting requirements. (1) Prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the department. The statement must set forth:

(a) the name, trade name, and address of the principal place of business of the seller, any other place of business of the seller, and the seller's domicile state; and

(b) all owners or controlling persons and every partner, officer, director, or person occupying a similar status or performing similar functions and their home addresses.

(2) By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state or contracted

with another party for delivery service in connection with a sale of tobacco products into this state made during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department. The memorandum or sales invoice must provide, for each delivery sale made during the previous calendar month:

- (a) the name and address of the consumer to whom the sale was made;
- (b) the brand or brands of the tobacco products that were sold; and
- (c) the quantity of tobacco products that were sold.

(3) A person that satisfies the requirements of 15 U.S.C. 376 is considered to meet the requirements of this section.

(4) The department may seek an injunction to restrain the actual or threatened violation of this section and to compel the seller to comply with this section.

Section 6. Forfeiture of contraband and property used in transporting contraband. (1) Upon the seizure of any contraband and within 10 working days after seizure of any equipment or property, the officer making the seizure shall:

(a) deliver an inventory of the property or contraband seized to the person from whom the seizure was made or to any other person having a right or interest in the seized property or contraband, if known; and

(b) file a copy of the inventory with the department if the tobacco product is contraband under part 1 of this chapter or with the department of justice if the tobacco product is contraband under parts 4 or 5 of this chapter.

(2) If a person other than the person from whom the property or contraband was seized, as described in subsection (1), does not notify the department that issued the notice of a written claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (1), the seized property or contraband is considered forfeited.

(3) If a person notifies the appropriate department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (1), the person is entitled to a hearing on the claim or right. The hearing must be held before the issuing department's director or the director's designee, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property or contraband is more than \$500, a person seeking the return of the property or contraband may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property or contraband was seized.

(4) All property and contraband forfeited must be disposed of as provided in 16-11-158.

Section 7. Section 16-10-306, MCA, is amended to read:

“16-10-306. Cigarette and tobacco product labels — federal requirements — penalty. (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

(a) tax, trademark, or copyright law; or

(b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

(a) the package is marked as manufactured for use outside of the United States;

(b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or

(c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed \$10,000.

(5) For the purposes of this section, ~~the term~~ "cigarette" has the meaning defined in 16-11-102 and "tobacco product" ~~has the meaning defined in 16-11-201~~ means all products containing tobacco for human consumption or use except cigarettes."

Section 8. Section 16-11-102, MCA, is amended to read:

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

(a) ~~"Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.~~

(a) *"Contraband" means:*

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

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

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

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

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

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

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

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

~~(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that the person operates for a profit in premises or locations other than the person's own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.~~

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

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

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

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

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

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

~~(b)~~(d) "*Full face value of insignia*" means the total amount of the tax levied under this part.

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

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

~~(e)~~(g) "*Licensed subjobber*" means a subjobber licensed under the provisions of this part. The person must be treated as a wholesaler.

~~(f)~~(h) "*Licensed wholesaler*" means a wholesaler licensed under the provisions of this part.

~~(g)~~(i) "*Manufacturer*" means any person who fabricates cigarettes tobacco products from raw materials for the purpose of resale.

~~(h)~~ "*Public warehouses*" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

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

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

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

~~(j)~~(m) "Retailer" means a person, *other than a wholesaler*, who ~~operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail~~ is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines.

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

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

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

~~(m)~~(q) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the ~~cigarettes tobacco products~~ to a licensed retailer or ~~cigarette tobacco product~~ vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

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

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

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

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

~~(n)~~(u) "Wholesaler" means a person who ~~services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:~~

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

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

Section 9. Section 16-11-103, MCA, is amended to read:

"16-11-103. Powers of department. (1) The department ~~shall have the power and authority to~~ may prescribe all rules not inconsistent with the

provisions of this ~~part~~ chapter for the detailed and efficient administration of this ~~part~~ chapter. All rules and orders promulgated must be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by ~~part 2~~ of this chapter.

(2) The department of revenue and the department of justice and ~~its~~ their duly authorized agents ~~are empowered to~~ may conduct inquiries and hearings, and any member of the department of revenue, department of justice, or any agent ~~is authorized to~~ may administer oaths and take testimony under oath relative to the matter of inquiry. The director, the attorney general, or an authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. The director, the attorney general, or ~~the director's~~ an agent, after the hearing, shall make findings and issue an order in writing, ~~which~~ The findings and order must be filed in the office of the department of revenue or the department of justice and must be open for public inspection.

(3) The department is authorized to contract with the department of justice for the investigations required under this ~~part~~ chapter. The department may appoint additional assistants and establish an additional division of ~~cigarette tobacco product~~ enforcement as required to carry out the provisions of this ~~part~~ chapter.

(4) The department and the department of justice are authorized to employ clerical and field assistants necessary to properly administer the provisions of this ~~part~~ chapter.

(5) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.

(6) When requested by the department of revenue, the department of justice shall:

(a) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of tobacco products; and

(b) serve as a liaison to local law enforcement authorities in matters relating to tobacco law enforcement."

Section 10. Section 16-11-104, MCA, is amended to read:

"16-11-104. Carriers to report cigarette shipments — penalties. (1) ~~Every~~ Except as provided in subsection (3), every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state or country any ~~cigarettes~~ tobacco products shall, if requested by the department, report in writing ~~such~~ the shipments or deliveries to the department on forms furnished by the department. ~~The reports must include giving~~ the date, the person to whom the ~~same was~~ tobacco products were consigned and delivered, the quantity as shown by the bill of lading, and ~~such~~ other information ~~as~~ that the department may require. A carrier shall retain for ~~30~~ 36 months all pertinent and relevant records necessary for the preparation of this report and any other information ~~that~~ the department may require.

(2) A common carrier who violates the provisions of subsection (1) is subject to civil penalties as determined by the department. For a first offense, a natural person shall be fined an amount not to exceed \$50,000, and any other entity shall be fined an amount not to exceed \$75,000. For a second or subsequent offense, a

natural person shall be fined an amount not to exceed \$100,000, and any other entity shall be fined an amount not to exceed \$150,000.

(3) A common carrier hauling, transporting, or shipping tobacco products to a licensed wholesaler or retailer in Montana shall submit the reports described in subsection (1) to the department upon request of the department.”

Section 11. Section 16-11-111, MCA, is amended to read:

“16-11-111. Cigarette, tobacco products, and moist snuff sales tax — exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

(7) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to the wholesaler, of all tobacco products other than cigarettes and moist snuff. The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist

snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

(9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been collected and paid to the department shall comply with all the provisions of this part and the rules adopted to implement this part as if it were a wholesaler.

(10) A retailer must assume that the tobacco products tax has not been collected and paid to the department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states that the applicable Montana tobacco products tax is included in the total billing cost."

Section 12. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. (1) Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

~~(1)(a)~~ 0.90% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

~~(2)(b)~~ 0.60% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar month; and

~~(3)(c)~~ 0.45% for purchases in excess of 5,160 cartons in any calendar month.

(2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid to the department in full less a 1.5% defrayment for the wholesaler's collection and administrative expenses and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund except as provided in 16-11-119. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

Section 13. Section 16-11-118, MCA, is amended to read:

"16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, and retailers. (1) All wholesalers and subjobbers shall keep for ~~5~~ 3 years all:

~~(a) invoices of cigarettes~~ tobacco products purchased, and imported, or sold;

~~(b) all receipts issued and insignia purchased;~~ and

~~(c) an accurate record of all sales of cigarettes~~ tobacco products, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination.

(2) All retailers and tobacco product vendors shall keep for 3 years all invoices of tobacco products purchased and received, showing the date of each purchase, the brand purchased, the quantity of each brand purchased, and an accurate record of the total sales of tobacco products.

(3) A wholesaler, retailer, subjobber, or tobacco product vendor shall permit the department and the department of justice and their assistants, authorized

agents, or representatives to examine all ~~cigarettes~~ *tobacco products*, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter.

(4) A person that violates the provisions of subsections (1) through (3) is subject to civil penalties as determined by the department of not less than \$1,000 or more than \$10,000."

Section 14. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 15-1-501, 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) 2.6% in the long-range building program account provided for in 17-7-205;

(c) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(d) the remainder to the state general fund.

(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 15-1-501 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 15. Section 16-11-120, MCA, is amended to read:

"16-11-120. Cigarette Tobacco product licenses. Every wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor. A separate application and a separate license is required for each place of business owned, controlled, or operated by the wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor within the state of Montana. Application forms must include the type and general description of applicant organizations, names of all known owners, and other pertinent information *as that the department may require in regularly promulgated rules by rule.* The department shall comply with rules issued by the board of review established in 30-16-302 with respect to the form of electronic verification of information required or acceptable for licensing purposes."

Section 16. Section 16-11-122, MCA, is amended to read:

"16-11-122. License fees — renewal. (1) Each application for a wholesaler's license *or a tobacco product vendor's license* must be accompanied by a fee of \$50.

(2) Each application for a subjobber's license must be accompanied by a fee of \$50.

(3) Each application for a retailer's license must be accompanied by a fee of \$5.

(4) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(5) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1 year, without proration, and are not transferable.”

Section 17. Section 16-11-131, MCA, is amended to read:

“16-11-131. Transporting ~~cigarettes tobacco products~~ without insignia compliance a misdemeanor — invoices and delivery tickets required — stop and inspection authorized. (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any ~~cigarettes tobacco products~~ that do not bear the insignia (stamps) required by this part *comply with the requirements of this chapter.*

(2) (a) When transporting unstamped cigarettes *or roll-your-own tobacco*, a person shall possess invoices or delivery tickets for the cigarettes *or roll-your-own tobacco* that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes *or roll-your-own tobacco* being transported.

(b) The cigarettes *or roll-your-own tobacco* transported are *contraband and* are subject to seizure, forfeiture, *destruction*, and sale as provided in 16-11-141, 16-11-147, 16-11-158, [section 6], 16-11-509, and this section if:

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; ~~or~~

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes *or roll-your-own tobacco*; *or*

(iv) *the cigarettes or roll-your-own tobacco are intended for sale in this state and are not on the directory.*

(3) Transportation of cigarettes *or roll-your-own tobacco* from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes *or cigarettes or roll-your-own tobacco that are not on the directory* possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting ~~cigarettes tobacco products~~ in violation of this ~~section~~ *chapter*, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) *When a person engaged in the business of selling tobacco products ships or causes to be shipped any tobacco products to any person in this state that are not in the tobacco product manufacturer’s original container or wrapping, the container or wrapping must be plainly and visibly marked with the words “tobacco products”.*

~~(5)~~(6) A person violating the provisions of this section is guilty of a misdemeanor *and is subject to the penalties in 16-11-148.*”

Section 18. Section 16-11-132, MCA, is amended to read:

“16-11-132. Unlawful to sell ~~cigarettes~~ tobacco products without valid license — exceptions. (1) ~~A~~ *Unless approved by the department, a person may not sell, offer to sell, or possess with intent to sell any ~~cigarettes~~ tobacco products, at wholesale or retail, unless the person’s license is current and valid under the provisions of this part.*

(2) A person may not sell, offer to sell, or possess with intent to sell any ~~cigarettes~~ tobacco products, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, *tobacco product vendor*, or retailer who is not licensed under this part or who is not licensed by the state in which the person sells, offers to sell, or intends to sell ~~cigarettes~~ tobacco products. However, a wholesaler, subjobber, *tobacco product vendor*, or retailer licensed under the provisions of this chapter may sell cigarettes to any person, wholesaler, subjobber, *tobacco product vendor*, or retailer not licensed under this chapter if:

(a) the person, wholesaler, subjobber, *tobacco product vendor*, or retailer is exempt from state ~~cigarette~~ tobacco product taxation provisions;

(b) the person, wholesaler, subjobber, *tobacco product vendor*, or retailer furnishes documentary evidence of exemption from state ~~cigarette~~ tobacco product taxation provisions; and

(c) the person, wholesaler, subjobber, *tobacco product vendor*, or retailer signs a receipt of purchase for any ~~cigarettes~~ tobacco products evidencing an exemption from state ~~cigarette~~ tobacco product taxation provisions.

(3) A person violating the provisions of this section is ~~guilty of a misdemeanor and~~ shall be punished as provided in ~~this part 16-11-148~~, and all ~~cigarettes~~ tobacco products in the person’s possession must be seized, ~~and forfeited, to the state and destroyed pursuant to 16-11-147, 16-11-158, and [section 6].”~~

Section 19. Section 16-11-133, MCA, is amended to read:

“16-11-133. Sale and use of cigarettes without insignia unlawful. (1) ~~A~~ *Unless approved by the department, a person who sells any package of cigarettes that does not bear the insignia required by this part and a person who uses or consumes a cigarette within this state, taken from a package that does not bear the required insignia, is guilty of a misdemeanor and is subject to the penalties in 16-11-148.*

(2) *This section may not be construed to prohibit a natural person from physically transporting into the state of Montana for the person’s own personal consumption or use, a maximum of:*

(a) *600 cigarettes that bear the tax insignia of another state; or*

(b) *30 ounces of tobacco products, other than cigarettes, on which the tobacco taxes of another state have been paid.”*

Section 20. Section 16-11-141, MCA, is amended to read:

“16-11-141. Powers of arrest — search and seizure. (1) The department of justice is a criminal justice agency. Designated agents of the department of justice have peace officer status and may arrest any person violating any provision of this ~~part~~ chapter, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence ~~any unlawful or unlawfully possessed license, stamp, or insignia~~ contraband found in the possession of any person or in any place.

(2) *Any investigator or peace officer who finds a tobacco product that the investigator or peace officer has reasonable cause to believe is contraband may*

seize and remove the contraband and the packages in which the contraband is kept. The contraband and all packages containing the contraband must, in addition to any other penalty prescribed by this chapter, be forfeited to the state of Montana as provided in [section 6] and destroyed as provided in 16-11-158.”

Section 21. Section 16-11-142, MCA, is amended to read:

“16-11-142. Duties of county attorneys and peace officers. In the enforcement of this ~~part~~ chapter, the department of justice may call to its assistance, and it is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this ~~part~~ chapter.”

Section 22. Section 16-11-143, MCA, is amended to read:

“16-11-143. Penalty and interest for unpaid ~~cigarette~~ tobacco product tax. (1) If a person fails or refuses to pay the *tobacco product tax* required by this part when due, the department shall proceed to determine the tax due from the information that the department can obtain and shall assess the tax plus penalty and interest as provided in 15-1-216.

(2) In the case of any violation of this chapter, the department may sue, in the district where the department maintains its principal office, for the amount of the unpaid *tobacco product tax*, penalty, and costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty. When the court finds that the failure to pay the tax has been willful, the court shall, in addition, assess damages in treble the amount of the tax found to be due.”

Section 23. Section 16-11-144, MCA, is amended to read:

“16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, *tobacco product vendor*, retailer, ~~cigarette vendor~~, or person licensed under 16-11-303 for failure to comply with any provision of ~~this part~~, The Montana Cigarette Sales Act (Title 16, chapter 10), ~~the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3)~~ *this chapter*, or with any lawful rule of the department made pursuant to those laws.

(2) A person aggrieved by a revocation or suspension may apply to the department for a hearing, which must be open to the public. If the person is aggrieved by the decision of the department, the person may further appeal to the court.

(3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1 year.

(4) A person who sells ~~cigarettes~~ *tobacco products* after the person’s license has been revoked or suspended is guilty of a misdemeanor and ~~must be punished as provided in this part~~ *is subject to the penalties in 16-11-148*, and all ~~cigarettes~~ *tobacco products* in the person’s possession must be seized and forfeited to the state.”

Section 24. Section 16-11-145, MCA, is amended to read:

“16-11-145. Place where violations committed a considered public nuisance. Each person having possession or control of or who maintains a building or place where ~~cigarettes~~ *tobacco products* are sold in violation of this ~~part~~ chapter or who permits the ~~cigarettes~~ *tobacco products* to be sold in violation of this ~~part~~ chapter in any place or building possessed, controlled, or maintained by that person is guilty of maintaining and keeping a nuisance. The

building or place so used, together with the personal property and fixtures used in connection therewith *with the building*, is considered a nuisance. The person must be enjoined and the building or place, personal property, and fixtures abated as a nuisance at the instance of the state.”

Section 25. Section 16-11-146, MCA, is amended to read:

“16-11-146. Penalty for forged license stamp or insignia. A person found guilty of forgery under 16-11-134 shall be punished by imprisonment in the state prison for not less than 1 year or more than 14 years. *In addition, the department may impose the civil penalties in 16-11-148.*”

Section 26. Section 16-11-147, MCA, is amended to read:

“16-11-147. Seizure and forfeiture of ~~unlawful cigarettes property used in transporting contraband.~~ ~~(1)~~ A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which ~~cigarettes are contraband,~~ *with a value of \$1,000 or more,* is being unlawfully transported, together with the ~~cigarettes contraband~~ and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its authorized agent, a sheriff or deputy, or any other peace officer and is subject to forfeiture as provided in ~~subsection (2)~~ *[section 6]*.

~~(2) Upon the seizure of any cigarettes and within 2 days after seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department.~~

~~(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.~~

~~(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee, with the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized.”~~

Section 27. Section 16-11-148, MCA, is amended to read:

“16-11-148. Violation a misdemeanor unless otherwise provided — penalties Penalties and other remedies. (1) Unless otherwise provided, the *purposeful, knowing, or negligent* violation of any provision of this part constitutes a misdemeanor. ~~A person violating any provision of this part shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months punishable by imprisonment for a term of up to 1 year or by a fine of up to \$1,000, or both. For a first offense, if a violation of this part involves contraband, the value of which does not exceed \$1,000, the offense is punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both. If the person is the holder of a license issued under this part, the license must be revoked by the department for 1 year. Second and~~

subsequent purposeful, knowing, or negligent violations of any provision of this part constitutes a felony punishable by imprisonment for a term exceeding 1 year or a fine not to exceed \$50,000, or both.

(2) In addition to any other civil or criminal remedy provided by law, upon a determination that a license holder under this part has violated any section in this part or any rule adopted pursuant to this part, the license may be suspended or revoked in the manner provided in 16-11-144 in a proceeding brought by the department or the attorney general.

(3) (a) Except as provided in subsection (3)(b), in addition to the criminal penalties provided in subsection (1), the department or the department of justice may assess a person who violates any provision of this part a civil penalty of \$250 for the first full or partial pack of contraband cigarettes and \$10 for each additional full or partial pack of contraband cigarettes. For purposes of this definition of cigarette, 0.09 ounces of roll-your-own tobacco constitutes one individual cigarette. Each tax insignia affixed and each offer to sell, sale, or possession for sale of cigarettes in violation of this part constitutes a separate violation.

(b) A civil penalty may not be assessed to a person for a first violation of subsection (1) if the offense involves contraband with a value of \$1,000 or less.

(4) The department or the department of justice shall determine the amount of the penalty provided in subsection (3) and notify the person who unlawfully possessed or transported the contraband cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year."

Section 28. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before state tax appeal board. A person aggrieved by any action of the department or its authorized agents ~~under taken to enforce~~ the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

Section 29. Section 16-11-150, MCA, is amended to read:

"16-11-150. Appeal to district court. Any person aggrieved by any action or decision of the ~~state tax appeal board~~ *department or the department of justice* or a licensing decision of the department made under the provisions of this part may appeal ~~therefrom~~ to the district court in accordance with the Montana Administrative Procedure Act."

Section 30. Section 16-11-155, MCA, is amended to read:

"16-11-155. Definitions. As used in 16-11-111, ~~and~~ 16-11-155, ~~through 16-11-156, and~~ 16-11-158, the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

(a) by a treaty between the tribe and a territorial government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement."

Section 31. Section 16-11-158, MCA, is amended to read:

"16-11-158. Sale or retention of forfeited property — use of sale proceeds — destruction of contraband. (1) When property is forfeited under ~~16-11-147~~ [section 6], the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of ~~16-11-111, 16-11-131, 16-11-147, and 16-11-155~~ through ~~16-11-158~~ *this chapter* or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property, *other than contraband*, at public auction to the highest bidder. ~~The department, before delivering a seized item, shall first require stamps to be affixed.~~

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the ~~items~~ *property*, including costs incurred by a local, state, tribal, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value of the property seized on an Indian reservation and that is allocated to a tribe pursuant to a state-tribal cooperative agreement, must be deposited in the state general fund.

(3) *Contraband forfeited under [section 6] must be destroyed.*"

Section 32. Section 16-11-507, MCA, is amended to read:

"16-11-507. Reporting of information. (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 ~~or 16-11-203~~ and that the wholesaler sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part. The department and attorney general shall share the information received under this part with each other and may share the information with other federal,

state, or local agencies only for the purposes of enforcement of 16-11-403, this part, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with this part. (Certain provisions void on occurrence of contingency—sec. 16, Ch. 397, L. 2003.)”

Section 33. Section 53-6-1201, MCA, is amended to read:

“53-6-1201. Special revenue fund — health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

- (a) money from cigarette taxes deposited under 16-11-119(1)(c); and
- (b) money from taxes on tobacco products other than cigarettes deposited under ~~16-11-206(1)(b)~~ 16-11-119(3)(b).

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children’s health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 34. Enforcement. The attorney general, a designee of the attorney general, or any person who holds a permit under 26 U.S.C. 5713 may bring an action in the appropriate Montana district court to prevent or restrain violations of [section 5] by any person or by a principal of the person.

Section 35. Repealer. Sections 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, and 16-11-206, MCA, are repealed.

Section 36. Codification instruction. [Sections 1 through 6 and 34] are intended to be codified as an integral part of Title 16, chapter 11, and the provisions of Title 16, chapter 11, apply to [sections 1 through 6 and 34].

Section 37. Effective date. [This act] is effective 90 days after passage and approval.

Approved April 28, 2005

CHAPTER NO. 512

[HB 696]

AN ACT PROVIDING THAT AN EXPRESS PURPOSE OF THE MONTANA YOUTH COURT ACT IS TO PROVIDE THAT WHENEVER A YOUTH IS REMOVED FROM THE HOME, THE YOUTH IS ENTITLED TO MAINTAIN ETHNIC, CULTURAL, OR RELIGIOUS HERITAGE WHEN APPROPRIATE; AMENDING SECTION 41-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 41-5-102, MCA, is amended to read:

“41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to prevent and reduce youth delinquency through a system that does not seek retribution but that ~~provides~~ *provides*:

(a) immediate, consistent, enforceable, and avoidable consequences of youths' actions;

(b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders; ~~and~~

(c) in appropriate cases, restitution as ordered by the youth court; *and*

(d) *that, whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate;*

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.”

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

Approved April 28, 2005

CHAPTER NO. 513

[HB 701]

AN ACT GENERALLY REVISING LAWS RELATING TO DECEDENTS' ESTATES, PRINCIPAL AND INCOME ALLOCATIONS, AND TRUSTS; AMENDING SECTIONS 30-10-909, 72-3-1101, 72-4-303, 72-16-906, AND 72-34-442, 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 30-10-909, MCA, is amended to read:

“30-10-909. Fraudulent and other prohibited practices. ~~(1)~~ It is unlawful for a person, in connection with the offer or sale of any living trust, directly or indirectly, in, into, or from this state, to:

~~(a)~~(1) employ any device, scheme, or artifice to defraud;

~~(b)~~(2) make any untrue statement of a material fact;

~~(c)~~(3) fail to state a material fact necessary to render any statement made not misleading; or

~~(d)~~(4) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

~~(2) It is unlawful for a person to sell a living trust to a person for whom a living trust is not suitable.”~~

Section 2. Section 72-3-1101, MCA, is amended to read:

“72-3-1101. Collection of personal property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed ~~\$20,000~~ *\$50,000*;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).”

Section 3. Section 72-4-303, MCA, is amended to read:

“72-4-303. Filing of letters, bond, inventory, and affidavit. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file ~~in duplicate~~ with a district court in this state in a county in which property belonging to the decedent is located:

(a) ~~an authenticated copies~~ *copy* of the personal representative’s appointment and of any official bond given;

(b) an inventory of the property of the nonresident decedent located in this state, which must contain the information prescribed in 72-3-607; and

(c) an affidavit stating:

(i) the date of death of the nonresident decedent; and

(ii) that no local administration or application or petition for local administration is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying the representative as having registered with the district court and stating the name and date of death of the decedent.”

Section 4. Section 72-16-906, MCA, is amended to read:

“72-16-906. Required filing of United States estate tax return. The personal representative or domiciliary foreign personal representative of the estate of any decedent *who died prior to January 1, 2005*, whose estate is required to file a United States estate tax return shall file a duplicate of the United States estate tax return with the department of revenue.”

Section 5. Section 72-34-442, MCA, is amended to read:

“72-34-442. Receipts from liquidating assets — allocation. (1) In this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to 72-34-441, natural resources subject to 72-34-443, timber subject to 72-34-444, a derivative or option subject to 72-34-446, an asset subject to 72-34-447, or any asset for which the trustee establishes a reserve for depreciation under 72-34-450.

(2) A trustee shall allocate to income ~~10%~~ *85%* from a liquidating asset and the balance to principal.”

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [Section 4] applies retroactively, within the meaning of 1-2-109, to deaths occurring after December 31, 2004, for which the probate of the decedents’ estates closes after [the effective date of this act].

Approved April 28, 2005

CHAPTER NO. 514

[HB 704]

AN ACT PROVIDING TIMEFRAMES FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE RESULTS OF SURVEYS AND INFORMAL DISPUTE RESOLUTION FOR LONG-TERM CARE FACILITIES; AMENDING SECTION 53-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-6-109, MCA, is amended to read:

“53-6-109. Consistent regulation of long-term care facilities — rulemaking authority — *timeframes*. (1) In order to provide more consistent regulation of long-term care facilities that provide intermediate and skilled nursing care statewide, the department shall adopt rules in consultation with long-term care provider groups, the long-term care ombudsman, as described in 52-3-603, and appropriate consumer groups ~~by July 1, 2003~~, that:

(1)(a) define the following terms used in the survey and certification process for long-term care facilities that provide intermediate and skilled nursing care:

- (a)(i) actual harm;
- (a)(ii) potential for more than minimal harm;
- (a)(iii) avoidable;
- (a)(iv) unavoidable; and
- (a)(v) immediate jeopardy;

(1)(b) define an informal dispute resolution process to provide nursing homes with an opportunity to respond to survey findings and deficiency citations that are believed to be made in error. The rules must be consistent with the purpose of informal dispute resolution that is intended to give the provider an opportunity to demonstrate that a deficiency has been applied in error or is a misjudgment of true facts. The objective of the process is to avoid the imposition of unnecessary sanctions and to diminish the need for formal administrative hearings with the state, as provided for in 53-6-108, or the federal government agencies that are responsible for the enforcement of remedies. The process must provide for an objective review of the raised issues by an individual who is independent of the survey process and who can evaluate the legal sufficiency of the findings of the surveyors. *The department shall provide a written determination of the outcome of the informal dispute resolution process within 60 days from the date that the dispute is submitted to the individual conducting the dispute resolution process. As used in this subsection (1)(b), “submitted” means that the provider and any other party to the dispute have provided their final position statements or arguments to the individual conducting the dispute resolution process, along with any supporting documents, within the time established by that individual.*

(1)(c) define standards for survey determinations in which the surveyors question the efficacy of orders for drugs and treatments made by a resident’s attending physician. The standards must recognize that a written physician’s order provides evidence of medical necessity and the appropriateness of the drugs and treatments ordered, unless the survey agency alleges substandard practice by the physician. The standards must provide for the reporting of any substandard practice of a physician to the board of medical examiners by the

surveyors. The standards must outline a facility's responsibilities in monitoring drugs and treatments ordered for residents and for consulting with the attending physician as appropriate.

(2) *The department shall inform long-term care facilities of the results of any survey, certification survey, complaint survey, or postsurvey revisit within 10 working days of the last date of the survey on the form provided by the centers for medicare and medicaid services for that purpose.*

Section 2. No appropriation. It is the intent of the legislature that the requirements of [this act] be conducted within existing levels of funding.

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 515

[HB 707]

AN ACT INCREASING THE COMPENSATION PAID TO FISH, WILDLIFE, AND PARKS LICENSE AGENTS; ALLOWING LICENSE AGENTS TO CHARGE A CONVENIENCE FEE FOR PURCHASES MADE WITH A CREDIT CARD OR A DEBIT CARD; REVISING THE DEFINITION OF "TRANSACTION" TO INCLUDE THE COLLECTION OF ANY DATA OR FEE; AMENDING SECTION 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 87-2-903, MCA, is amended to read:

"87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction, *plus any additional amount as determined by rules adopted pursuant to subsection (9).*

(2) *A license agent may charge a convenience fee of up to 3% of the total amount of a transaction if a purchase is made with a credit card or a debit card. A financial institution or credit card company may not prohibit collection of the convenience fee provided for in this subsection.*

~~(2)~~(3) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission *and convenience fee.*

~~(3)~~(4) Each license agent shall submit to the department copies of each *paper* license sold.

~~(4)~~(5) The department may charge license agents appointed after March 1, 1998, an electronic license system ~~installation~~ fee not to exceed actual costs.

~~(5)~~(6) The department may designate classes of license agents and may establish a ~~deadline for submission of license money~~ *by protocol* for each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

~~(6)~~(7) For purposes of this section, the term "transaction" includes the sale of any license, *or permit, collection of any data or fee, or issuance of any certificate* prescribed by the department.

~~(7)~~(8) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate *commission and convenience* fee, by the deadline established by the department, an interest charge equal to the rate charged under 15-1-216 ~~must~~ *may* be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

~~(8)~~(9) The department may adopt rules necessary to implement this section.”

Section 2. Coordination instruction. If House Bill No. 172 is not passed and approved, then [section 1(1) and (7) of this act] is void.

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 516

[HB 720]

AN ACT REQUIRING LOCAL GOVERNMENTS TO REVIEW APPLICATIONS FOR DEVELOPMENT AND USE OF PROPERTY UNDER REGULATIONS IN EFFECT AT THE TIME THAT A COMPLETE SITE-SPECIFIC DEVELOPMENT PLAN IS SUBMITTED; AND PROVIDING EXCEPTIONS.

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

Section 1. Legislative findings and purpose. (1) The legislature finds that:

(a) it is necessary and desirable as a matter of public policy to:

(i) provide for reasonable certainty, stability, and fairness in the land use planning and regulatory process;

(ii) stimulate economic growth;

(iii) secure the reasonable investment-backed expectations of a landowner; and

(iv) foster cooperation between the public and private sectors in land use planning and regulation;

(b) the ability of a landowner to be certain of the applicable regulations and review procedures upon submitting a complete application for local government approval of a site-specific development plan will preserve the prerogatives and authority of a local government with respect to land use matters;

(c) the establishment of regulatory certainty will promote the goals specified in this section in a manner consistent with Article II, sections 3, 17, and 29, of the Montana constitution that guarantees to each person the inalienable right to acquire, possess, and protect property and that recognizes the corresponding responsibilities and is a matter of statewide concern.

(2) It is the purpose of [sections 1 through 3] to:

(a) provide fair standards to protect the rights of a person who submits a development application to a local government while recognizing the public health, safety, and general welfare purposes of development review; and

(b) require a local government to comply with these standards.

Section 2. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) “Landowner” means an owner of a legal or equitable interest in real property. The term includes an heir, a successor, or an assignee of the ownership interest.

(2) “Local government” means the governing body of a county, a municipality, or a consolidated city-county that exercises planning or zoning authority. The term includes a board, commission, or agency of the local government that has review or approval authority of a site-specific development plan.

(3) “Property” means real property subject to land use regulation by a local government.

(4) (a) “Site-specific development plan” means a plan that has been submitted to a local government by a landowner or the landowner’s representative and that describes, with reasonable certainty, the type, density, and intensity of use for a specific property. The plan may be in the form of but is not limited to an application or plan for:

- (i) a site plan;
 - (ii) a conditional or special use approval; or
 - (iii) any other land use approval designation used by a local government.
- (b) The term does not include a request for a variance.

Section 3. Local government regulations — restrictions. (1) Unless a specific review process for an application is otherwise provided by law, the local government shall provide the applicant with a written receipt showing the date and time that the site-specific development plan was first submitted to the local government. The local government shall establish, by ordinance or resolution, a completeness review process, including time periods within which to determine whether the application contains all of the information required by the local government’s ordinances, resolutions, or other regulations, and shall notify the applicant of the local government’s determination as to whether or not the application is complete. If the applicant fails to submit the missing information within any applicable time period, the local government may deny approval of the site-specific development plan as an incomplete submission. A determination that a site-specific development plan is complete under this section does not limit the ability of the local government to request additional information during the review process.

(2) Except as provided under 76-2-206 or 76-2-306 or unless otherwise agreed to in writing by the applicant, the review and approval, approval with conditions, or denial of the site-specific development plan must be based solely upon the ordinances and regulations in effect at the time that the complete site-specific development plan was submitted to the local government entity that has jurisdiction over the application. Nothing in this subsection affects the ability of a local government to develop and impose conditions on a site-specific development plan as otherwise provided by law or by locally adopted ordinances or regulations.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 3].

Approved April 28, 2005

CHAPTER NO. 517

[HB 726]

AN ACT ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT WITH MONTANA CORPORATIONS TO OPERATE DAY REPORTING PROGRAMS TO PROVIDE AN ALTERNATE SENTENCING OPTION AND TO SANCTION PROBATION VIOLATORS; PROVIDING THAT A CONVICTED PERSON PAY A \$50 PRESENTENCE REPORT FEE TO FUND THE ALTERNATE SENTENCING OPTION; AMENDING SECTIONS 46-18-111, 46-18-201, 46-18-225, 46-23-1015, 53-1-203, AND 53-1-501, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 46-18-111, MCA, is amended to read:

“46-18-111. Presentence investigation — when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant’s needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney’s office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) *The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(4).”*

Section 2. Section 46-18-201, MCA, is amended to read:

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

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

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

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

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

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

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

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

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

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

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

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

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

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred

imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

- (a) limited release during employment hours as provided in 46-18-701;
- (b) incarceration in a detention center not exceeding 180 days;
- (c) conditions for probation;
- (d) payment of the costs of confinement;
- (e) payment of a fine as provided in 46-18-231;
- (f) payment of costs as provided in 46-18-232 and 46-18-233;
- (g) payment of costs of court-appointed counsel as provided in 46-8-113;
- (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
- (j) community service;
- (k) home arrest as provided in Title 46, chapter 18, part 10;
- (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
- (n) *participation in a day reporting program provided for in 53-1-203;*
- ~~(n)~~(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
- ~~(o)~~(p) any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(n)~~ (4)(p).

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

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.”

Section 3. Section 46-18-225, MCA, is amended to read:

“46-18-225. Sentencing of nonviolent felony offenders — criteria — alternatives to be considered — court to state reasons for imprisonment. (1) In sentencing a nonviolent felony offender, the sentencing judge shall first consider alternatives to imprisonment of the offender in a state prison, including placement of the offender in a community corrections facility or program, a prerelease center, ~~or~~ a prerelease program, *or a day reporting program provided for in 53-1-203.* In considering alternatives to imprisonment, the sentencing judge shall examine the sentencing criteria contained in subsection (2).

(2) Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of imprisonment in a state prison, the sentencing judge shall take into account whether:

(a) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in a state prison;

(b) the needs of the offender can be better served in the community or in a facility or program other than a state prison;

(c) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(d) the offender acted under strong provocation;

(e) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

(f) the offender has no prior history of conviction for a criminal act or, if the offender has a prior history of conviction for a criminal act, the offender has led a law-abiding life for a substantial period of time before the commission of the present crime;

(g) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(h) the character and attitude of the offender indicate that the offender is likely to commit another crime;

(i) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(j) imprisonment of the offender would create an excessive hardship on the offender or the offender's family.

(3) If the judge sentences the offender to a state prison, the judge shall state the reasons why the judge did not select an alternative to imprisonment, based on the criteria contained in subsection (2).”

Section 4. Section 46-23-1015, MCA, is amended to read:

“46-23-1015. Informal probation violation intervention hearing. (1) A probation and parole officer who reasonably believes that a probationer has violated a condition of probation may initiate an informal probation violation intervention hearing to gain the probationer's compliance with the conditions of probation without a formal revocation hearing under 46-18-203.

(2) A hearings officer designated by the department shall conduct the intervention hearing.

(3) If the hearings officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearings officer

may order the probationer to serve up to 30 days in a county detention center, with credit for time served since the time of arrest, *or order the probationer to participate in a day reporting program as provided for in 53-1-203* and order the probationer to pay the costs of incarceration *or participation in the day reporting program*. The department shall pay the incarceration costs not paid by the probationer.

(4) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime are not applicable to a probationer ordered to be held in a county detention center under this section.”

Section 5. 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) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, and 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 to establish and maintain 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.

(d) utilize 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;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(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 and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(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 and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 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). Prior to entering into a contract for a period of 10 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.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

(4) *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.*

Section 6. Section 53-1-501, MCA, is amended to read:

“53-1-501. Rates for residential community correctional program board, room, and services charged by the department of corrections. (1) The department of corrections shall establish per diem rates for room, board, and services for persons placed in or committed to a community correctional program operated by the department of corrections. The department of

corrections may adopt rules allowing it to order part of a person's employment income to be used to pay restitution, fines, and child or spousal support.

(2) The department of corrections shall prescribe rules and procedures for the establishment of rates and charges to residents *or participants* in any community correctional program that is under contract with the department of corrections and that provides room, board, or services or any combination of room, board, and services to residents of those facilities *or to participants in* programs. The amount assessed by these programs must be subject to the resident's ability to pay, based on the rates established as the basis for assessed charges, and subject to approval by the department of corrections."

Section 7. Effective dates. (1) [Section 1] and this section are effective July 1, 2005.

(2) [Sections 2 through 6] are effective July 1, 2006.

Approved April 28, 2005

CHAPTER NO. 518

[HB 732]

AN ACT ADOPTING AND REVISING LAWS TO IMPLEMENT INDIVIDUAL PRIVACY AND TO PREVENT IDENTITY THEFT; REQUIRING A CONSUMER REPORTING AGENCY TO BLOCK INFORMATION ON A REPORT THAT RESULTS FROM A THEFT OF IDENTITY; PROVIDING PRIVACY PROTECTION PROVISIONS FOR CREDIT CARD SOLICITATIONS AND RENEWALS AND TELEPHONE ACCOUNTS; PROVIDING PRIVACY PROTECTION FOR BUSINESS RECORDS BY REQUIRING DESTRUCTION OF RECORDS; REQUIRING BUSINESSES TO REPORT A BREACH OF COMPUTER SECURITY; PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTION 31-3-115, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 31-3-115, MCA, is amended to read:

"31-3-115. Adverse information. (1) Whenever a consumer reporting agency prepares an investigative consumer report, ~~no~~ adverse information in the consumer report, (other than information ~~which~~ *that* is a matter of public record), may *not* be included in a subsequent consumer report unless ~~such~~ *the* adverse information has been verified in the process of making ~~such~~ *the* subsequent consumer report.

(2) *A consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, pursuant to 15 U.S.C. 1681c-2."*

Section 2. Identity theft impediments — credit cards — definition.

(1) A credit card issuer that mails an offer or solicitation to receive a credit card and, in response, receives a completed application for a credit card that lists an address that is different from the address on the offer or solicitation shall verify the change of address by contacting the person to whom the solicitation or offer was mailed, as provided in [section 3].

(2) Notwithstanding any other provision of law, a person to whom an offer or solicitation to receive a credit card is made is not liable for the unauthorized use

of a credit card issued in response to that offer or solicitation if the credit card issuer does not verify the change of address pursuant to subsection (1) prior to the issuance of the credit card unless the credit card issuer proves that this person actually incurred the charge on the credit card.

(3) When a credit card issuer receives a written or oral request for a change of the cardholder's billing address and then receives a written or oral request for an additional credit card within 10 days after the requested address change, the credit card issuer may not mail the requested additional credit card to the new address or, alternatively, activate the requested additional credit card unless the credit card issuer has verified the change of address.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), a person, firm, partnership, association, corporation, or limited liability company that accepts credit cards for the transaction of business may not print more than the last five digits of the credit card account number or the expiration date upon any receipt provided to the cardholder.

(b) Subsection (4)(a) applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording the person's credit card number is by handwriting or by an imprint or copy of the credit card.

(c) Subsection (4)(a) applies beginning January 1, 2008, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use before January 1, 2005.

(d) Subsection (4)(a) applies beginning January 1, 2006, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2005.

(5) (a) As used in this section, "credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(b) "Credit card" does not mean any of the following:

(i) any single credit device used to obtain telephone property, labor, or services in any transaction with an entity under regulation as a public utility;

(ii) any device that may be used to obtain credit pursuant to an electronic fund transfer, but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account;

(iii) any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products that will be used primarily for business rather than personal or family purposes.

Section 3. Identity theft impediments — credit card renewal — telephone accounts. (1) A credit card issuer that receives a change of address request, other than for a correction of a typographical error, from a cardholder who orders a replacement credit card within 60 days before or after that request is received shall send to that cardholder a change of address notification that is addressed to the cardholder at the cardholder's previous address of record. If the replacement credit card is requested prior to the effective date of the change of address, the notification must be sent within 30 days of the change of address request. If the replacement credit card is requested after the effective date of the

change of address, the notification must be sent within 30 days of the request for the replacement credit card.

(2) Any business entity that provides telephone accounts that receives a change of address request, other than for a correction of a typographical error, from an account holder who orders new service shall send to that account holder a change of address notification that is addressed to the account holder at the account holder's previous address of record. The notification must be sent within 30 days of the request for new service.

(3) The notice required pursuant to subsection (1) or (2) may be given by telephone or electronic mail communication if the credit card issuer or business entity that provides telephone accounts reasonably believes that it has the current telephone number or electronic mail address for the account holder or cardholder who has requested a change of address. If the notification is in writing, it may not contain the consumer's account number, social security number, or other personal identifying information but may contain the consumer's name, previous address, and new address of record. For business entities described in subsection (2), the notification may also contain the account holder's telephone number.

(4) A credit card issuer or a business entity that provides telephone accounts is not required to send a change of address notification when a change of address request is made in person by a consumer who has presented valid identification or is made by telephone and the requester has provided a unique alphanumeric password.

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

(a) "Credit card" has the meaning provided in [section 2].

(b) "Telephone account" means an account with a telecommunications carrier, as defined in 69-3-803.

Section 4. Purpose. The purpose of [sections 4 through 8] is to enhance the protection of individual privacy and to impede identity theft as prohibited by 45-6-332.

Section 5. Definitions. As used in [sections 4 through 8], unless the context requires otherwise, the following definitions apply:

(1) (a) "Business" means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or of any other country or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records. The term also includes industries regulated by the public service commission or under Title 30, chapter 10.

(b) The term does not include industries regulated under Title 33.

(2) "Customer" means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(3) "Individual" means a natural person.

(4) "Personal information" means an individual's name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual's passport

number, driver's license or state identification number, insurance policy number, bank account number, credit card number, debit card number, passwords or personal identification numbers required to obtain access to the individual's finances, or any other financial information as provided by rule. A social security number, in and of itself, constitutes personal information.

(5) (a) "Records" means any material, regardless of the physical form, on which personal information is recorded.

(b) The term does not include publicly available directories containing personal information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

Section 6. Record destruction. A business shall take all reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer necessary to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable.

Section 7. Computer security breach. (1) Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data system immediately following discovery if the personal information was, or is reasonably believed to have been acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay in notification. The notification required by this section must be made after the law enforcement agency determines that it will not compromise the investigation.

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

(a) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the person or business and causes or is reasonably believed to cause loss or injury to a Montana resident. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal information is not used or subject to further unauthorized disclosure.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) social security number;

(B) driver's license number or state identification card number;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(5) (a) For purposes of this section, notice may be provided by one of the following methods:

(i) written notice;

(ii) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001;

(iii) telephonic notice; or

(iv) substitute notice, if the person or business demonstrates that:

(A) the cost of providing notice would exceed \$250,000;

(B) the affected class of subject persons to be notified exceeds 500,000; or

(C) the person or business does not have sufficient contact information.

(b) Substitute notice must consist of the following:

(i) an electronic mail notice when the person or business has an electronic mail address for the subject persons; and

(ii) conspicuous posting of the notice on the website page of the person or business if the person or business maintains one; or

(iii) notification to applicable local or statewide media.

(6) Notwithstanding subsection (5), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and that does not unreasonably delay notice is considered to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the data system.

(7) If a business discloses a security breach to any individual pursuant to this section and gives a notice to the individual that suggests, indicates, or implies to the individual that the individual may obtain a copy of the file on the individual from a consumer credit reporting agency, the business shall coordinate with the consumer reporting agency as to the timing, content, and distribution of the notice to the individual. The coordination may not unreasonably delay the notice to the affected individuals.

Section 8. Department to restrain unlawful acts — penalty. (1) Whenever the department has reason to believe that a person has violated [sections 2 through 8] and that proceeding would be in the public interest, the department may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice upon giving appropriate notice to that person, pursuant to 30-14-111(2).

(2) The provisions of 30-14-111(3) and (4) and 30-14-112 through 30-14-115 apply to [sections 2 through 8].

(3) A violation of [sections 2 through 8] is a violation of 30-14-103, and the penalties for a violation of [sections 2 through 8] are as provided in 30-14-142.

Section 9. Computer security breach. (1) Any licensee or insurance-support organization that conducts business in Montana and that owns or licenses computerized data that includes personal information shall provide notice of any breach of the security of the system following discovery or notice of the breach of the security of the system to any individual whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The notice must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person to whom personal information is disclosed in order for the person to perform an insurance function pursuant to this part that maintains computerized data that includes personal information shall notify the licensee or insurance-support organization of any breach of the security of the system in which the data is maintained immediately following discovery of the breach of the security of the system if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and requests a delay of notice. The notice required by this section must be made after the law enforcement agency determines that the notice will not compromise the investigation.

(4) Licensees, insurance-support organizations, and persons to whom personal information is disclosed pursuant to this part shall develop and maintain an information security policy for the safeguarding of personal information and security breach notice procedures that provide expedient notice to individuals as provided in subsection (1).

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

(a) "Breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a licensee, insurance-support organization, or person to whom information is disclosed pursuant to this part. Acquisition of personal information by a licensee, insurance-support organization, or employee or agent of a person as authorized pursuant to this part is not a breach of the security of the system.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the name and the data elements are not encrypted:

(A) social security number;

(B) driver's license number or state identification number;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Section 10. Codification instruction. (1) [Sections 2 through 8] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 2 through 8].

(2) [Section 9] is intended to be codified as an integral part of Title 33, chapter 19, part 3, and the provisions of Title 33, chapter 19, part 3, apply to [section 9].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective date. (1) Except as provided in subsection (2), [this act] is effective March 1, 2006.

(2) [Sections 1, 10, and 11 and this section] are effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 519

[HB 737]

AN ACT CHANGING THE NAME OF A "PHYSICIAN ASSISTANT-CERTIFIED" TO "PHYSICIAN ASSISTANT" AND THE NAME OF A PLAN FOR THE USE OF A PHYSICIAN ASSISTANT BY A PHYSICIAN FROM "UTILIZATION PLAN" TO "SUPERVISION AGREEMENT"; REVISING REQUIREMENTS FOR A SUPERVISING PHYSICIAN; PROHIBITING THE PRACTICE OF MEDICINE BY A PHYSICIAN ASSISTANT WITHOUT A SUPERVISION AGREEMENT; REVISING PROVISIONS FOR RULEMAKING BY THE BOARD OF MEDICAL EXAMINERS; REVISING THE TYPES OF LICENSES ISSUED TO PHYSICIAN ASSISTANTS; REQUIRING A DUTIES AND DELEGATION AGREEMENT AND PROVIDING FOR THE CONTENT OF A SUPERVISION AGREEMENT AND A DUTIES AND DELEGATION AGREEMENT; REVISING AUTHORITY FOR ISSUANCE OF PHYSICIAN ASSISTANT LICENSES AND LICENSE RENEWALS; PROVIDING FOR EXEMPTIONS FROM LICENSURE; REVISING THE CRITERIA FOR LICENSURE OF PHYSICIAN ASSISTANTS; REVISING THE AUTHORITY FOR THE AGENCY RELATIONSHIP BETWEEN A PHYSICIAN ASSISTANT AND THE ASSISTANT'S SUPERVISING PHYSICIAN; REVISING THE DEGREE OF SUPERVISION REQUIRED OF THE SUPERVISING PHYSICIAN; REVISING THE PRESCRIPTION AND DISPENSING AUTHORITY OF A PHYSICIAN ASSISTANT; REMOVING THE PROHIBITION AGAINST A PHYSICIAN ASSISTANT PERFORMING AN ABORTION; PROVIDING FOR THE PRACTICE OF A PHYSICIAN ASSISTANT AND A SUPERVISING PHYSICIAN DURING A DISASTER OR EMERGENCY; AMENDING SECTIONS 2-15-1731, 33-22-111, 33-22-114, 37-3-103, 37-8-103, 37-20-101, 37-20-103, 37-20-104, 37-20-202, 37-20-203, 37-20-301, 37-20-302, 37-20-303, 37-20-401, 37-20-402, 37-20-403, 37-20-404, 37-20-405, 37-20-406, 39-71-116, 41-1-401, 46-4-114, 50-5-101, 50-5-216, 50-16-201, 50-19-101, 50-20-109, 52-5-108, AND 53-6-101, MCA; AND REPEALING SECTION 37-20-201, MCA.

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 11 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;
- (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-certified~~ *assistant*; and
- (f) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member must be a citizen of the United States. Each member, except for public members, must have been licensed and must have practiced medicine 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 commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

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

Section 2. Section 33-22-111, MCA, is amended to read:

“33-22-111. Policies and certificates to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies or certificates of disability insurance, including individual, group, and blanket policies or certificates, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician ~~assistant-certified~~ *assistant*, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, naturopathic physician, physical therapist, or advanced practice registered nurse as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person’s practice. Whenever the policies or certificates insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.”

Section 3. Section 33-22-114, MCA, is amended to read:

“33-22-114. Coverage required for services provided by physician ~~assistants-certified~~ *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 for health services provided by a

physician ~~assistant-certified~~ *assistant* as normally covered by contracts for services supplied by a physician if health care services that the physician ~~assistant-certified~~ *assistant* is approved to perform are covered by the contract.”

Section 4. Section 37-3-103, MCA, is amended to read:

“37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

- (a) the gratuitous rendering of services in cases of emergency or catastrophe;
- (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician’s regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.
- (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) the practice of optometry under the conditions and limitations defined by the laws of this state;
- (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;
- (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- (h) the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;
- (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;
- (j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.
- (k) the rendering of services by a physical therapist, technician, medical assistant, as provided in 37-3-104, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;
- (l) the rendering of services by a physician ~~assistant-certified~~ *assistant* in accordance with Title 37, chapter 20;
- (m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;
- (n) the execution of a death sentence pursuant to 46-19-103;
- (o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.," "D.O.," or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 5. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions — limitations on authority conferred. (1) This chapter may not be construed as prohibiting:

- (a) gratuitous nursing by friends or members of the family;
- (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) nursing assistance in the case of an emergency;
- (d) the practice of nursing by students enrolled in approved nursing education programs;
- (e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;
- (f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States while in the discharge of that nurse's official duties;
- (g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents of the religion or denomination;
- (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the care may be provided by a parent or guardian;
- (i) the execution of a death sentence pursuant to 46-19-103;
- (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board; and
- (k) the provision of nutrition, inclusive of supplements and medications prescribed by a physician, an advanced practice registered nurse, or a physician ~~assistant-certified~~ *assistant*, to be administered to an individual through a gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition, inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian, foster parent, surrogate parent, or other adult family member. The exemption in this subsection (1)(k) does not apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed facility that provides skilled nursing care as provided in Title 50, chapter 5.

(2) This chapter may not be construed:

(a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;

(b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or

(c) to permit any person to undertake the treatment of disease by any of the methods employed in the healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

(i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician ~~assistant-certified~~ *assistant*, advanced practice registered nurse, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home- and community-based services program of the department of public health and human services.

(ii) "Health maintenance activities" includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the physician or other health care professional for the person with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

Section 6. Section 37-20-101, MCA, is amended to read:

"37-20-101. Qualifications of supervising physician and physician assistant-certified assistant. (1) ~~Each~~ *The* supervising physician named in the ~~utilization plan~~ *supervision agreement* required by 37-20-301 shall:

(a) possess a current, ~~unrestricted~~ *active* license to practice medicine in this state; *and*

~~(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the physician assistant-certified to be employed is of good character and is both mentally and physically able to perform the duties of a physician assistant-certified described in the utilization plan;~~

~~(c) submit a statement to the board that he will exercise supervision over the physician assistant-certified assistant in accordance with any the rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and by the physician assistant.~~

~~(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.~~

(2) ~~Each~~ *A* physician assistant-certified *assistant* named in the ~~utilization plan~~ *supervision agreement* required by 37-20-301 shall meet the criteria for

~~approval as a physician assistant certified as provided in 37-20-402 must have a current, active Montana physician assistant license.”~~

Section 7. Section 37-20-103, MCA, is amended to read:

“37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician ~~assistant certified~~ *assistant* to perform those functions and duties specifically delegated by law to persons licensed as optometrists, as defined under Title 37, chapter 10. ~~A physician assistant certified may not perform an abortion. A physician assistant may perform an abortion.”~~

Section 8. Section 37-20-104, MCA, is amended to read:

“37-20-104. Title and Unlicensed practice — penalties. (1) A person who employs a physician ~~assistant certified~~ *assistant* or holds out to the public that the person is a physician ~~assistant certified~~ *assistant* without ~~the approval of the Montana state board of medical examiners~~ *having been issued a Montana physician assistant license* is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) Prior to being issued a license and ~~receiving approval of submitting a utilization plan supervision agreement to the board,~~ a physician ~~assistant certified~~ *assistant* may not ~~engage in the practice of medicine as a physician assistant~~ in this state, even under the supervision of a licensed physician.

(3) The board may enforce the provisions of this section by the remedy of injunction and *the application of other penalties as provided by law.*”

Section 9. Section 37-20-202, MCA, is amended to read:

“37-20-202. Adoption of rules. The board ~~of medical examiners shall~~ *may* adopt administrative rules to implement the provisions of this chapter ~~that:~~

(1) ~~address the issues of supervision and direction limitations and requirements;~~

(2) ~~address the issue of protocols for interaction of medical personnel with differing responsibilities;~~

(3) ~~specify that a physician may not utilize more than one physician assistant certified unless the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;~~

(4) ~~address other considerations pertinent to the approval of physician assistant certified utilization plans and locum tenens utilization plans, and the health care needs of the public;~~

(5) ~~address physician assistant training in Montana; and~~

(6) ~~and set forth grounds for disciplinary action.”~~

Section 10. Section 37-20-203, MCA, is amended to read:

“37-20-203. Licensing of physician assistants certified assistants. The Montana state board of medical examiners may issue the following two forms of physician assistants certified licenses under its seal:

(1) a permanent license, signed by the president and subject to periodic renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board *either an active or inactive*

license to a physician assistant applying for a license or license renewal in Montana.”

Section 11. Section 37-20-301, MCA, is amended to read:

~~“37-20-301. Utilization plan required — contents — approval Requirements for use of physician assistant — supervision agreement — duties and delegation agreement — content — approval — filing.~~ (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified assistant in the practice of medicine, as defined in 37-3-102, and *as provided in this chapter and* a physician assistant-certified assistant may not be employed or practice as a physician assistant-certified assistant unless the physician assistant-certified assistant:

- (a) is supervised by a licensed physician licensed in this state;
- (b) is licensed by the Montana state board of medical examiners; and
- (c) has received board approval of submitted a physician assistant-certified utilization plan assistant supervision agreement to the board on a form prescribed by the department; and

(d) has paid to the board the applicable fees required by the board.

~~(2) A physician assistant-certified utilization plan must set forth in detail the following information:~~

~~(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;~~

~~(b) the nature and location of the physician’s medical practice;~~

~~(c) the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;~~

~~(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;~~

~~(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and~~

~~(f) other information the board may consider necessary.~~

~~(3) The board shall approve the utilization plan if it finds that the practice of the physician assistant-certified is:~~

~~(a) assigned by the supervising physician;~~

~~(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and~~

~~(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.~~

~~(4) A supervising physician and a physician assistant certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.~~

~~(5) A utilization plan may provide that a physician assistant certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member.~~

(2) A supervising physician and the supervised physician assistant shall execute a duties and delegation agreement constituting a contract that defines the physician assistant's professional relationship with the supervising physician and the limitations on the physician assistant's practice under the supervision of the supervising physician. The agreement must be kept current, by amendment or substitution, to reflect changes in the duties of each party occurring over time. The board may by rule specify other requirements for the agreement. A physician assistant licensed by the board before October 1, 2005, shall execute a duties and delegation agreement with a supervising physician by October 1, 2006.

(3) A physician assistant and the physician assistant's supervising physician shall keep the supervision agreement and the duties and delegation agreement at their place of work and provide a copy upon request to a health care provider, a health care facility, a state or federal agency, the board, and any other individual who requests one."

Section 12. Section 37-20-302, MCA, is amended to read:

~~**"37-20-302. Utilization plan approval fee — renewal of license — renewal fee** *Application for and renewal of license — fees.* (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.~~

~~(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.~~

~~(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.~~

~~(4) A license renewal fee set by the board must be paid at the time the license is renewed.~~

~~(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.~~

~~(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed. (1) A person desiring to practice as a physician assistant shall submit an application to the department on a form prescribed by the department and pay all applicable fees to the department. The applicant shall provide the authorization necessary for the release of records or other information necessary for licensure to the department. The burden of proving that the applicant has complied with all application requirements is on the applicant. However, the department may make an independent investigation to determine whether the applicant possesses the required qualifications and whether the applicant has ever committed unprofessional conduct.~~

(2) In order to renew a license, a physician assistant shall pay to the department a renewal fee as prescribed by the board. The renewal fee must be paid before the expiration date of the license, as set forth in department rule. The department shall send renewal notices before the renewal is due. Except as provided in 37-1-138, failure to pay a renewal fee results in the expiration of the license.

~~(7)(3)~~ Fees received by the department of labor and industry must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 13. Section 37-20-303, MCA, is amended to read:

"37-20-303. Exemptions from ~~approval~~ licensure requirement. ~~This chapter does not require the approval of a physician assistant certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapter 3, 4, 6 through 17, or 31. (1) This chapter does not prohibit or require a license as a physician assistant for the rendering of medical or medically related services if the service rendered is within the applicable scope of practice for any of the following individuals:~~

(a) a physician assistant providing services in an emergency or catastrophe, as provided in [section 31];

(b) a federally employed physician assistant;

(c) a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a medication aide licensed or authorized pursuant to Title 37, chapter 8;

(d) a student physician assistant when practicing in a hospital or clinic in which the student is training;

(e) a physical therapist licensed pursuant to Title 37, chapter 11;

(f) a medical assistant, as provided in 37-3-104;

(g) an emergency medical technician licensed pursuant to Title 50, chapter 6;
or

(h) any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide when licensed or authorized pursuant to laws of this state.

(2) A licensee or other individual referred to in subsection (1) who is not a licensed physician assistant may not use the title "PA" or "PA-C" or any other word or abbreviation to indicate or induce others to believe that the individual is a physician assistant."

Section 14. Section 37-20-401, MCA, is amended to read:

"37-20-401. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1731.

~~(2) "Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant certified.~~

(2) "Duties and delegation agreement" means a written contract between the supervising physician and the physician assistant that meets the requirements of 37-20-301.

~~(3) "Physician assistant certified" assistant~~ means a member of a health care team, ~~approved~~ licensed by the board, who provides medical services that may include *but are not limited to* examination, diagnosis, prescription of medications, and treatment, ~~as approved by the board,~~ under the supervision of a physician licensed by the board.

~~(4) “Protocol” means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction.~~

(4) “Supervising physician” means a medical doctor or doctor of osteopathy licensed by the board who agrees to a supervision agreement and a duties and *delegation* agreement.

(5) “*Supervision agreement*” means a written agreement between a supervising physician and a physician assistant providing for the supervision of the physician assistant.”

Section 15. Section 37-20-402, MCA, is amended to read:

“37-20-402. Criteria for licensing a physician assistant-certified assistant. A person may not be licensed as a physician assistant-certified assistant in this state unless the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association’s committee on allied health education and accreditation ~~accredited by the accreditation review commission on education for the physician assistant or, if accreditation was granted before 2001, accredited by the American medical association’s committee on allied health education and accreditation or the commission on accreditation of allied health education programs;~~

(3) has taken and successfully passed an examination recognized administered by the national commission on the certification of physician assistants; and

(4) holds a current certificate from the national commission on the certification of physician assistants; and

~~(5) has submitted to the board detailed information on the person’s history, education, and experience.”~~

Section 16. Section 37-20-403, MCA, is amended to read:

“37-20-403. Physician assistant-certified assistant as agent of supervising physician — degree of supervision required — scope of practice. (1) ~~In establishing protocol, a~~ A physician assistant-certified must be assistant is considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified under the utilization plan assistant and is professionally and legally responsible for the care and treatment of a patient by a physician assistant licensed in accordance with this chapter. A health care provider shall consider the instructions of a physician assistant-certified assistant as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified under the utilization plan assistant.

(2) ~~The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis. Onsite or direct supervision of a physician assistant by a supervising physician is not required if the supervising physician has provided a means of communication between the supervising physician and the physician assistant or an alternate means of supervision in the event of the supervising physician’s absence.~~

(3) *A physician assistant may diagnose, examine, and treat human conditions, ailments, diseases, injuries, or infirmities, either physical or mental, by any means, method, device, or instrumentality authorized by the supervising physician.*

Section 17. Section 37-20-404, MCA, is amended to read:

“37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician ~~assistant-certified~~ *assistant* may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician may impose additional limitations on the prescribing and dispensing authority ~~granted by the board~~ *supervising physician*.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician ~~assistant-certified~~ *assistant* may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232 is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 34 days.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician ~~assistant-certified~~ *assistant* shall maintain registration with the federal drug enforcement administration *if the physician assistant is authorized by the supervising physician to prescribe controlled substances*.

(e) ~~Prescriptions~~ *A prescription* written by a physician ~~assistants-certified~~ *assistant* must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

(f) ~~The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified.~~

Section 18. Section 37-20-405, MCA, is amended to read:

“37-20-405. Billing. A supervising physician, office, firm, institution, or other entity may bill *for a service provided by a supervised physician assistant-certified services assistant*.

Section 19. Section 37-20-406, MCA, is amended to read:

“37-20-406. Liaison to board. The Montana academy of physician assistants shall elect *may appoint* one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.”

Section 20. 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 and the Occupational Disease Act of Montana 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) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "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 (5)(a) through (5)(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 (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(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) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) (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) ~~but~~ *The term* does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "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) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "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.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(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.

(24) "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.

(25) The “plant of the employer” includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer’s usual trade, business, or occupation.

(26) “Primary medical services” means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) “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) “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) “Reasonably safe tools and 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.

(30) (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), “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) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) “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.

(33) “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.

(34) “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.

(35) "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.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury 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-certified~~ *assistant* licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (36)(a), in the area where the physician ~~assistant-certified~~ *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 (36)(a) through (36)(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, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (36)(a), in the area in which the advanced practice registered nurse is located.

(37) "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.

(38) "Year", unless otherwise specified, means calendar year."

Section 21. Section 41-1-401, MCA, is amended to read:

"41-1-401. Definitions. As used in this part, the following definitions apply:

(1) "Emancipated minor" means an individual under 18 years of age who:

(a) is or has been married;

(b) is separated from the individual's parent, parents, or legal guardian and is self-supporting; or

(c) has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-3-438.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Health professional" includes only those persons licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, dentists, physician ~~assistants-certified~~ *assistants*, professional counselors, or social workers."

Section 22. Section 46-4-114, MCA, is amended to read:

“46-4-114. Reporting fetal deaths. A licensed nurse, a midwife, a physician ~~assistant-certified~~ *assistant*, an emergency medical technician, a birthing assistant, or any other person who assists in the delivery that occurs outside a licensed medical facility of a fetus that is believed or declared to be dead shall report the death by the earliest means available to the coroner of the county in which the death occurred.”

Section 23. Section 50-5-101, MCA, is amended to read:

“50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation” means a designation of approval.

(2) “Accreditation association for ambulatory health care” means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) “Activities of daily living” means tasks usually performed in the course of a normal day in a resident’s life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) “Adult day-care center” means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) “Adult foster care home” means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

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

(i) “Aged person” means a person as defined by department rule as aged.

(ii) “Custodial care” means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person’s basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) “Disabled adult” means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) “Light personal care” means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) “Affected person” means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) “Assisted living facility” means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

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

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes

hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.

(b) The term does not include critical access hospitals.

(29) "Infirmery" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmery—A" provides outpatient and inpatient care;

(b) an "infirmery—B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, ~~physician assistant-certified~~ *assistant*, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a

case-by-case basis if the individual's attending physician, physician ~~assistant-certified~~ *assistant*, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

- (i) serves either adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services; and
- (iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these

services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 24. Section 50-5-216, MCA, is amended to read:

"50-5-216. Limitation on care provided in adult foster care home. (1) Except as provided in this section, the types of care offered by adult foster care homes are limited to light personal care or custodial care and may not include skilled nursing care.

(2) An adult foster care home may be licensed to provide care for an adult receiving state-funded services through the developmental disabilities program of the department or for an adult who resided in the home before reaching 18 years of age, even though the adult is:

- (a) in need of skilled nursing care;
- (b) in need of medical, physical, or chemical restraint;
- (c) nonambulatory or bedridden;
- (d) incontinent to the extent that bowel or bladder control is absent; or
- (e) unable to self-administer medications.

(3) An adult foster care home that applies for a license under subsection (2) shall provide the department with a copy of the statement required in subsection (4).

(4) A resident of an adult foster care home licensed under subsection (2) must have a certification in the form of a signed statement, renewed on an

annual basis, from a physician, a physician ~~assistant-certified~~ *assistant*, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who has actually visited the home within the year covered by the statement and certifies that:

(a) the services available to the resident in the home or in the community, or services that may be brought into the home from the community, including nursing services or therapies, are appropriate for meeting the health care or other needs of the resident; and

(b) the health care status of the resident does not necessitate placing the resident in a more intensive residential service setting.

(5) As used in this section, "skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under the orders of an attending physician."

Section 25. Section 50-16-201, MCA, is amended to read:

"50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, in order to ensure a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5) or licensed as a physician ~~assistant-certified~~ *assistant* pursuant to 37-20-203."

Section 26. Section 50-19-101, MCA, is amended to read:

"50-19-101. Definitions. (1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care provider" means a licensed physician, a physician ~~assistant-certified~~ *assistant*, a registered nurse, an advanced practice registered nurse, a naturopathic physician, or a direct-entry midwife practicing within the scope of the provider's professional license.

(3) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, and a screening for hepatitis B surface antigen, approved by the department."

Section 27. Section 50-20-109, MCA, is amended to read:

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

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

(b) after viability of the fetus, except as provided in subsection (2).

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

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

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

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

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

(5) The ~~utilization plan supervision agreement~~ of a physician ~~assistant-certified assistant~~ may not provide for performing abortions.

(6) Violation of subsections (1) through (3) ~~and (5)~~ is a felony."

Section 28. Section 52-5-108, MCA, is amended to read:

"52-5-108. Medical examination before admission — records required to accompany youth committed. (1) Before a youth is admitted for any purpose or for any length of time to the Pine Hills youth correctional facility or another facility under an order of commitment to the department of corrections, the youth must be examined by a licensed physician ~~assistant-certified assistant~~, by an advanced practice registered nurse, or by a licensed physician. A youth committed to the Pine Hills youth correctional facility or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the youth."

Section 29. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The

department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
- (j) services that are provided by physician ~~assistants certified~~ *assistants* within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
- (k) health services provided under a physician's orders by a public health department; and
- (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medicaid assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
- (b) home health care services;
- (c) private-duty nursing services;
- (d) dental services;
- (e) physical therapy services;
- (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;
- (g) clinical social worker services;
- (h) prescribed drugs, dentures, and prosthetic devices;
- (i) prescribed eyeglasses;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) inpatient psychiatric hospital services for persons under 21 years of age;
- (l) services of professional counselors licensed under Title 37, chapter 23;
- (m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

(p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(q) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise

curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 30. Unlawful acts. A person who performs acts constituting the practice of medicine in this state acts unlawfully if the person:

(1) has not been issued a license pursuant to this chapter and is not exempt from the licensing requirement of this chapter; or

(2) has received a license pursuant to this chapter but has not completed a duties and delegation agreement or a supervision agreement.

Section 31. Participation in disaster and emergency care — liability of physician assistant and supervising physician. (1) A physician assistant licensed in this state, licensed or authorized to practice in another state, territory, or possession of the United States, or credentialed as a physician assistant by a federal employer who provides medical care in response to an emergency or a federal, state, or local disaster may provide that care either without supervision as required by this chapter or with whatever supervision is available. The provision of care allowed by this subsection is limited to the duration of the emergency or disaster.

(2) A physician who supervises a physician assistant providing medical care in response to an emergency or disaster as described in subsection (1) need not comply with the requirements of this chapter applicable to supervising physicians.

(3) A physician assistant referred to in subsection (1) who voluntarily, gratuitously, and other than in the ordinary course of employment or practice renders emergency medical care during an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is provided somewhere other than in a health care facility as defined in 50-5-101 or a physician's office where those services are normally provided.

(4) A physician who supervises a physician assistant voluntarily and gratuitously providing emergency care at an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in supervising the physician assistant if the injury is caused by simple or ordinary negligence on the part of the physician assistant providing the care or on the part of the supervising physician.

Section 32. Repealer. Section 37-20-201, MCA, is repealed.

Section 33. Name change — directions to code commissioner. (1) Wherever a reference to physician assistant-certified appears in legislation enacted by the 2005 legislature, the code commissioner is directed to change it to an appropriate reference to physician assistant.

(2) Wherever a reference to utilization plan, meaning a plan as required by 37-20-301 for the utilization of a physician assistant, appears in legislation

enacted by the 2005 legislature, the code commissioner is directed to change it to an appropriate reference to supervision agreement.

Section 34. Codification instruction. [Sections 30 and 31] are intended to be codified as an integral part of Title 37, chapter 20, part 4, and the provisions of Title 37, chapter 20, part 4, apply to [sections 30 and 31].

Approved April 28, 2005

CHAPTER NO. 520

[HB 738]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE AN ADVISORY COMMISSION ON PROVIDER RATES AND SERVICES; PROVIDING LEGISLATIVE FINDINGS, PURPOSE, AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR THE DUTIES, MEMBERSHIP, AND ADMINISTRATION OF THE COMMISSION; REQUIRING THE COMMISSION TO REVIEW AND MAKE RECOMMENDATIONS CONCERNING SERVICES PROVIDED BY CONTRACT TO CHILDREN AND ADULTS IN A COMMUNITY SETTING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE COSTS OF THOSE SERVICES, AND REIMBURSEMENT RATES PAID TO THE CONTRACT PROVIDERS OF THOSE SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSIST THE COMMISSION; PROVIDING FOR THE PRIVACY OF CERTAIN CONTRACT INFORMATION; AND REQUIRING THE COMMISSION TO MAKE FINDINGS, RECOMMENDATIONS, AND REPORTS.

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

Section 1. Legislative findings, purpose, and intent. (1) The legislature finds that services provided by the department to persons who are living in a community setting outside of state institutions and who are persons with developmental disabilities, are mentally ill, or are elderly or very young are essential services, and the essential nature of the services is not diminished because the services are provided by contracts. Because the services provided by contracts are many and are important to the well-being of Montana residents who can least care for themselves, the legislature finds that it is necessary to establish a system under which provider services, the costs of providers, and the reimbursement rates paid to providers are monitored on a regular basis to ensure that state funding is appropriately expended, that consumers' and taxpayers' expectations are attended to, and that the providers of the services are treated fairly.

(2) The purpose of [sections 1 through 6] is to provide a regular, predictable, and equitable mechanism under which contracted services, costs, and reimbursement rates are given optimum attention by the department. The legislature does, however, retain its constitutional duty to enact or amend law concerning contracted services, make appropriations for contracted services through funding of department programs, and review department contracted service programs through the mechanism provided in [sections 1 through 6]. [Sections 1 through 6] are not intended to restrict the legislature in making its appropriate policy and fiscal judgments concerning the value of department programs or services.

(3) It is the intent of the legislature that to the greatest extent practicable, the commission should:

(a) establish an open and defensible process for conducting its work;

(b) create a set methodology or protocol through which provider reimbursement rates can be recommended for a service, service level, or population of service consumers served by a provider and the department;

(c) recommend a list of reimbursable expenses for every service and service level based upon the expenses necessary to provide that service or service level and comply with the licensure, contracts, and administrative rules that govern that service or service level;

(d) recommend rate equity among service levels within a group of services and between different groups of services; and

(e) recommend the best and most cost-effective method of regulating and auditing provider services.

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

(1) "Commission" means the commission on provider rates and services established in [section 3].

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

(3) "Director" means the director of the department.

(4) "Provider" means an entity that contracts with the department to offer services to others.

(5) "Services" means those services paid for by the department for:

(a) a child pursuant to Title 41, Title 42, chapter 3, or Title 52, chapter 2; or

(b) a child or an adult in a community or long-term care setting and not in a state institution, pursuant to Title 53.

Section 3. Commission on provider rates and services. (1) The department shall form an advisory commission to be known as the commission on provider rates and services, to provide information to the department concerning provider services, costs, and reimbursement rates. The commission membership must include a maximum of 15 individuals representing providers, consumers of provider services, and family members of consumers and is as follows:

(a) at least three providers;

(b) at least three of a combination of consumers of provider services and family members of consumers;

(c) two employees of the department;

(d) one representative from the legislative fiscal division;

(e) one representative from the governor's office on budget and program planning;

(f) one member of each of the two major political parties of the house of representatives; and

(g) one member of each of the two major political parties of the senate.

(2) Except as provided in this section, the commission is subject to the provisions of 2-15-122.

(3) Except as provided in this section, members shall serve for a term of 2 years and may be reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may be appointed for an additional two terms. The appointing authority shall stagger the first terms of the first board to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may be appointed and reappointed as the department determines necessary.

(4) The commission shall elect a presiding officer and vice presiding officer and by vote determine its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in consultation with the department.

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

Section 4. Duties of commission on provider rates and services. (1) The commission shall conduct an ongoing review of provider services, costs, and reimbursement rates. The review must be made without regard to the source of funds for reimbursement payments.

(2) The commission shall consult with the director concerning provider services, costs, and reimbursement rates subject to its review but shall make independent determinations of those matters within its authority. The commission shall establish the order in which provider services, costs, and reimbursement rates will be reviewed by the commission and the methodology that the commission will use in its review.

(3) The commission shall take into account the work of other advisory groups or councils working with the department on subjects concerning its authority and make recommendations to the director and appropriate members of those groups or councils concerning the subject and timing of the work of those groups or councils that will assist the commission and those groups or councils to exercise their legal or other authority and achieve their purpose.

(4) In conducting its review, the commission shall also consider:

- (a) the need for the department to limit expenditures to appropriations;
- (b) existing and future contracts with the department;
- (c) state and federal laws, rules, and regulations; and
- (d) the intention of the legislature to live within available revenue.

(5) In reviewing existing reimbursement rates and recommending new or altered reimbursement rates to be paid to providers, the commission shall consider the following factors:

- (a) the level of financial risk taken by a provider in providing services;
- (b) the complexity of the provider's services;
- (c) the capital investment made by the provider;
- (d) the administrative overhead in the provider's business; and
- (e) any other matter affecting the cost of the provider's services.

Section 5. Department to assist and cooperate with commission on provider rates and services — records privacy. The department shall provide to the commission the maximum assistance that may practicably be

made available to the commission and shall provide the commission with the necessary equipment, records, and other material that are both necessary and helpful for the commission to achieve the purposes of [sections 1 through 6], including records and other material concerning past, current, and potential provider services, costs, and reimbursement. In providing and considering those records and materials, the department and the commission shall make whatever changes in provider or consumer information that are necessary to comply with lawful requirements for the privacy of the service providers and consumers.

Section 6. Commission findings, recommendations, and reports.
The commission shall:

(1) make recommendations and reports concerning its activities and the results of its review to the director at those times as the commission determines; and

(2) make findings and recommendations and prepare a report to the legislature, in the manner provided in 5-11-210, on the subjects of its review.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 6].

Approved April 28, 2005

CHAPTER NO. 521

[HB 747]

AN ACT LIMITING SCHOOL DISTRICT AND PUBLIC POSTSECONDARY INSTITUTION LIABILITY FOR CIVIL DAMAGES RESULTING FROM STUDENT LABOR ON A CONSTRUCTION PROJECT AS PART OF A PUBLIC EDUCATION PROGRAM IF NOTICE OF THE STUDENT LABOR IS GIVEN AT THE TIME OF TRANSFER OF THE PROPERTY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Student construction project — disclosure — immunity.

(1) The entity that transfers title to a construction project constructed as part of a public education program shall disclose the fact that the construction project was constructed as part of a public education program on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase, sale, rental, or lease of the construction project. The disclosure provided for in this subsection must be in the following form or in a substantially similar form: "Student Construction Project: This property was constructed as part of a public education program and was in whole or in part constructed by students. The school district or public postsecondary institution responsible for the education program is not liable for civil damages resulting from construction projects constructed as part of a public education program except in cases of gross negligence or willful misconduct."

(2) Except in cases of gross negligence or willful misconduct, a school district or public postsecondary institution is not liable for civil damages resulting from a construction project constructed as part of a public education program if the disclosure required in subsection (1) is made.

(3) As used in this section, "public education program" means a program operated by a public school or a public postsecondary institution.

Section 2. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 1, and the provisions of Title 20, chapter 6, part 1, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [section 1].

Section 3. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Effective date. [This act] is effective July 1, 2005.

Section 5. Applicability. [This act] applies to student labor on construction projects regardless of the completion date of the project if the disclosure provided for in [section 1(1)] is made.

Approved April 28, 2005

CHAPTER NO. 522

[HB 748]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR STATE MATCHING FUNDS FOR FEDERAL WATER RESOURCE PROJECTS; PROVIDING FOR DEBT SERVICE PAYMENTS FROM AVAILABLE AMOUNTS IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Appropriation of bond proceeds. The amount of \$5 million is appropriated from the proceeds of the bonds authorized by [section 2] to the department of natural resources and conservation to be used for state matching funds for the north central regional water authority and the dry prairie regional water authority, contingent upon the authorization of general obligation bonds by the 59th legislature and the sale of bonds by the board of examiners.

Section 2. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding \$5 million to be used for state matching funds for the federal water resource projects described in [section 1] over and above the amount of general obligation bonds outstanding on January 1, 2005. The bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation bonds.

Section 3. Payment of debt service. It is the intent of the legislature to annually pay principal of and interest or premiums, if any, on the bonds authorized by [section 2] from any available funds in the treasure state endowment regional water system special revenue account established in

90-6-715. Funds in the treasure state endowment regional water system special revenue account may be used each fiscal year to pay debt service on the bonds in that fiscal year to the extent that funds in the account are then available. Subject to the limitations of 90-6-715, funds in the treasure state endowment regional water system special revenue account are subject to appropriation for other purposes that the legislature considers appropriate and are not reserved to pay debt service on the bonds authorized by [section 2].

Section 4. Agreement with department of natural resources and conservation. The board of examiners and the department of natural resources and conservation may enter into an agreement for the match to federal construction funds for the purpose of regional water projects, under which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, an amount, as determined by the state treasurer, that is sufficient to pay the principal and interest due on the bonds and notes from which the appropriation was made. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for a match to federal construction funds for the purpose of regional water projects may be credited against the department's payment obligation. Payment by the department must be made from available funds.

Section 5. Legislative consent. The appropriation authorized in [section 1] constitutes legislative consent for the projects contained in [section 1] within the meaning of 18-2-102.

Section 6. Requirement for approval of state debt. Because [section 2] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 2]. If [section 2] is not approved by the required vote, [this act] is void.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 523

[HB 749]

AN ACT INCREASING, IN BOTH FISCAL YEAR 2006 AND FISCAL YEAR 2007, THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-60-102, MCA, is amended to read:

"15-60-102. (Temporary) Utilization fee for bed days in nursing facilities. (1) A nursing facility in the state shall pay to the department a utilization fee for each bed day in the facility in the following amounts:

(a) in the amount of \$2.80, which must be applied to maintain the price-based average payment rate to nursing facilities at the fiscal year 2003 base amount;

(b) in fiscal year ~~2004~~ 2006, an additional amount of ~~\$1.70~~ \$4.25 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in 15-60-211; and

(c) beginning July 1, ~~2004~~ 2006, an additional amount of ~~\$2.50~~ \$5.50 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in 15-60-211.

(2) The fees collected must be deposited as follows:

(a) the amounts collected as provided in subsection (1)(a), in the general fund; and

(b) the amounts collected as provided in subsections (1)(b) and (1)(c), in the account in the state special revenue fund as provided in 15-60-211.

(3) A nursing facility may not place a fee created in this section on a patient's bill. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)”

Section 2. Appropriation. (1) The following money is appropriated to the department of public health and human services from the account in the state special revenue fund provided in 15-60-211 to fund increases in medicaid payments to nursing facilities:

Fiscal Year 2006	
State special revenue fund	\$3,500,000
Fiscal Year 2007	
State special revenue fund	\$6,000,000

(2) The following money is appropriated to the department of public health and human services for increases in medicaid payments to nursing facilities:

Fiscal year 2006	
Federal special revenue fund	\$8,449,471
Fiscal year 2007	
Federal special revenue fund	\$14,053,476

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 524

[HB 756]

AN ACT ENCOURAGING THE PRODUCTION AND USE OF BIODIESEL THROUGH TAX INCENTIVES; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO CRUSH OILSEED CROPS FOR PURPOSES OF BIODIESEL PRODUCTION; PROVIDING A TAX CREDIT TO A FACILITY PRODUCING BIODIESEL BASED UPON THE COST OF CONSTRUCTING AND EQUIPPING THE FACILITY; PROVIDING A TAX INCENTIVE FOR THE PRODUCTION OF BIODIESEL BASED UPON GALLONS OF PRODUCTION; PROVIDING THAT THE TAX INCENTIVE BE PAID OUT OF THE GENERAL FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Oilseed crush facility — tax credit. (1) An individual, corporation, partnership, or small business corporation, as defined in

15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property in Montana to crush oilseed crops for purposes of biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to crush oilseed only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the property, up to a total of \$500,000 for property invested in a facility. The credit must be claimed in the tax year in which the facility begins processing oilseed or manufacturing a product from oilseed.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to crush oilseed:

(a) The investment must be for depreciable property used primarily to crush oilseed or to manufacture a product from oilseed and must be operating before January 1, 2010.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes oilseed or that manufactures a product from crushed oilseed.

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

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and must have been processing oilseed or manufacturing a product from oilseed during the tax year for which the credit is claimed.

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

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility in which property is installed and for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

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

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

Section 2. Biodiesel production facility tax credit. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the cost of constructing and equipping a facility in Montana to be used for biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of construction of the facility and for each item of property purchased to produce biodiesel only in the year in which the facility is in production.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the facility or the property installed in the facility. The credit must be claimed in the tax year in which the facility begins production.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to manufacture biodiesel:

(a) The investment must be for depreciable property used primarily to manufacture biodiesel and must be operating before January 1, 2010.

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

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

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

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

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

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

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

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

Section 3. Biodiesel production incentive — appropriation. (1) (a) There is a tax incentive payable to biodiesel producers for increases in annual production the first 3 years of production. The tax incentive under this section applies to biodiesel upon which the tax has been paid under 15-70-343 by a licensed distributor. For the purposes of this section, the production year is the period from July 1 of the current year to June 30 of the succeeding year.

(b) Payments made by the department are statutorily appropriated, as provided in 17-7-502, from the state general fund.

(2) Except as provided in subsection (3), the tax incentive on each gallon of increased biodiesel production over the previous year, in accordance with subsection (1), is 10 cents a gallon for each gallon of increased production. Beginning July 1, 2010, there is no tax incentive.

(3) The tax incentive in subsection (2) may be claimed for:

- (a) the first year's total production;
- (b) the production in the second year that exceeds production in the first year; and
- (c) the production in the third year that exceeds production in the second year.

(4) After the department has verified production, the department shall begin payments of the biodiesel tax incentives based on actual production according to the terms of subsection (3).

(5) As used in this section, "biodiesel producer" means a person who engages in the business of producing, refining, or manufacturing in Montana biodiesel for sale, use, or distribution.

(6) The department shall adopt rules necessary to carry out the provisions of this section.

Section 4. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; [section 3]; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 5. Coordination instruction. If House Bill No. 776 is not passed and approved, the definition of "biodiesel" in 15-70-301 must read as follows:

"(2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.

(b) Biodiesel is also known as "B-100"."

Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 15, chapter 70, and the provisions of Title 15, chapter 70, apply to [section 3].

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 28, 2005

CHAPTER NO. 525

[HB 776]

AN ACT PROVIDING TAX INCENTIVES FOR BIODIESEL FUEL; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO BLEND BIODIESEL MADE FROM MONTANA PRODUCTS WITH DIESEL; PROVIDING FOR THE RECAPTURE OF THE CREDIT UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF TAX CREDITS CLAIMED; PROVIDING A TAX REFUND TO DISTRIBUTORS AND OWNERS OR OPERATORS OF MOTOR FUEL OUTLETS FOR SPECIAL FUEL TAXES PAID ON BIODIESEL; PROVIDING THAT THE SPECIAL FUEL TAX REFUNDS BE REIMBURSED FROM THE STATE GENERAL FUND; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF REFUNDS CLAIMED; ELIMINATING THE PROVISION TAXING BIODIESEL AT 85 PERCENT OF THE SPECIAL FUEL TAX RATE; REMOVING THE REQUIREMENT THAT TAX LABELS BE PLACED ON BIODIESEL PUMPS; PROVIDING A STATUTORY APPROPRIATION;

AMENDING SECTIONS 15-70-301, 15-70-304, 15-70-341, AND 17-7-502, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-370, MCA, AND SECTIONS 7 AND 9, CHAPTER 568, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

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

Section 1. Biodiesel blending and storage tax credit — recapture — report to interim committee. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the cost of storage and blending equipment to be used for blending biodiesel with petroleum diesel.

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of installing storage and blending equipment only in the year in which the taxpayer begins blending biodiesel fuel.

(3) (a) The amount of the credit that may be claimed by a distributor under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may not exceed \$52,500. The credit must be claimed in the tax year in which the distributor begins blending biodiesel for sale.

(b) The amount of the credit that may be claimed by an owner or operator of a motor fuel outlet under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may not exceed \$7,500. The credit must be claimed in the tax year in which the retailer begins blending of biodiesel for fuel.

(4) The following requirements must be met in order to be entitled to a tax credit for investment in property to blend biodiesel:

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

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

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

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

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

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

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax

liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

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

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

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

(10) Beginning after January 1, 2006, the department shall report to the revenue and transportation interim committee at least once each year the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit.

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

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

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

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

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

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

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

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

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

Section 3. Section 15-70-301, MCA, is amended to read:

~~15-70-301. (Temporary) Definitions.~~ As used in this part, the following definitions apply:

~~(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) "Bond" means:~~

~~(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or~~

~~(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

~~(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.~~

~~(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.~~

~~(5) "Department" means the department of transportation.~~

~~(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:~~

~~(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;~~

~~(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or~~

~~(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.~~

~~(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(7) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;~~

~~(b) an importer who imports special fuel for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and~~

~~(d) an exporter.~~

~~(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.~~

~~(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.~~

~~(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.~~

~~(12) "Improperly imported fuel" means special fuel that is:~~

~~(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or~~

~~(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.~~

~~(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.~~

~~(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:~~

~~(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;~~

~~(b) dedicated to public use;~~

~~(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or~~

~~(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.~~

~~(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I.~~

(American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

15-70-301. (Effective on occurrence of contingency) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) (a) "Biodiesel" means:

(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials *a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.*

(b) Biodiesel is also known as "~~B-20~~" "B-100".

(3) *"Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.*

~~(3)~~(4) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(4)~~(5) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(5)~~(6) "Cardtroll" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(6)~~(7) "Department" means the department of transportation.

~~(7)~~(8) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

~~(8)~~(9) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

~~(9)~~(10) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(10)~~(11) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

~~(11)~~(12) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

~~(12)~~(13) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(13)~~(14) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(14)~~(15) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(15)~~(16) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(16)~~(17) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

~~(17)~~(18) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(18)~~(19) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtroll, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(19)~~(20) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

~~(20)~~(21) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. ~~(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)~~

~~15-70-301. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions.~~ As used in this part, the following definitions apply:

~~(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) "Bond" means:~~

~~(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or~~

~~(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

~~(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.~~

~~(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.~~

~~(5) "Department" means the department of transportation.~~

~~(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:~~

~~(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;~~

~~(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or~~

~~(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.~~

~~(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(e) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(7) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;~~

~~(b) an importer who imports special fuel for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and~~

~~(d) an exporter.~~

~~(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.~~

~~(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.~~

~~(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.~~

~~(12) "Improperly imported fuel" means special fuel that is:~~

~~(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or~~

~~(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.~~

~~(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.~~

~~(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:~~

~~(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;~~

~~(b) dedicated to public use;~~

~~(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or~~

~~(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.~~

~~(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.~~

~~(17) "Special fuel dealer" means:~~

~~(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;~~

~~(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardrol, keylock, or similar device; or~~

~~(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.~~

~~(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.~~

~~(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.~~

~~(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."~~

Section 4. Section 15-70-304, MCA, is amended to read:

"15-70-304. (Temporary) Bonding, release of surety, and additional bond. (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b):

~~(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:~~

~~(a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and~~

~~(b) \$500 for any other special fuel user who:~~

~~(i) requests a special fuel user's permit to be reissued after being canceled for cause; or~~

~~(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.~~

~~(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but~~

~~this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.~~

~~(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit.~~

15-70-304. ~~(Effective on occurrence of contingency) Bonding, release of surety, and additional bond.~~ (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; ~~however~~ *However*, the total amount of the bond or bonds may not be less than:

(a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) \$500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301~~(3)~~(4), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301~~(3)~~(4) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate.

Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit. ~~(Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)~~

~~15-70-304.—(Effective July 1 of fourth year following date of occurrence of contingency) Bonding, release of surety, and additional bond.~~ (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

~~(a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and~~

~~(b) \$500 for any other special fuel user who:~~

~~(i) requests a special fuel user's permit to be reissued after being canceled for cause; or~~

~~(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.~~

~~(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.~~

~~(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit."~~

Section 5. Section 15-70-341, MCA, is amended to read:

~~"15-70-341.—(Temporary) License and security of special fuel distributors — denial or revocation of license — reissuance fee.~~ (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

~~(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and~~

~~(ii) security with the department in an amount to be determined by the department.~~

~~(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.~~

~~(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.~~

~~(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.~~

~~(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:~~

~~(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;~~

~~(b) fails to provide the security required by the department;~~

~~(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;~~

~~(d) is not in compliance with motor fuels laws in other jurisdictions; or~~

~~(e) fails to pay the special fuel license tax.~~

~~(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.~~

~~(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.~~

~~(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.~~

~~(6) As used in this section, "security" means:~~

~~(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or~~

~~(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or~~

~~(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

~~(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.~~

15-70-341. (Effective on occurrence of contingency) License and security of special fuel distributors — denial or revocation of license — reissuance fee. (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

(8) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy ~~preblended biodiesel fuel on which the tax has been paid. (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)~~

~~15-70-341. (Effective July 1 of fourth year following date of occurrence of contingency) License and security of special fuel distributors — denial or revocation of license — reissuance fee. (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:~~

~~(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and~~

~~(ii) security with the department in an amount to be determined by the department.~~

~~(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.~~

~~(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.~~

~~(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.~~

~~(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:~~

~~(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;~~

~~(b) fails to provide the security required by the department;~~

~~(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;~~

~~(d) is not in compliance with motor fuels laws in other jurisdictions; or~~

~~(e) fails to pay the special fuel license tax.~~

~~(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.~~

~~(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.~~

~~(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.~~

~~(6) As used in this section, "security" means:~~

~~(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or~~

~~(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or~~

~~(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.~~

~~(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section."~~

Section 6. 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: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; *[section 2]*; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; 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 Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; 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. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)”

Section 7. Section 12, Chapter 568, Laws of 2001, is amended to read:

“Section 12. Contingent effective date. ~~[This act]~~ *is [Sections 1 through 4] are* effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20

million on June 30 following the date on which the condition in subsection (1) is complied with.”

Section 8. Section 13, Chapter 568, Laws of 2001, is amended to read:

“**Section 13. Contingent termination.** ~~[This act] terminates~~ [Sections 1 through 4] terminate June 30 of the fourth year following [the effective date of this act].”

Section 9. Repealer. Section 15-70-370, MCA, and sections 7 and 9, Chapter 568, Laws of 2001, are repealed.

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 2].

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

(2) [Section 2] applies to biodiesel blend distributed or purchased in calendar quarters beginning after June 30, 2005.

Approved April 28, 2005

CHAPTER NO. 526

[HB 782]

AN ACT PROVIDING THAT ISSUE REMARKS MUST BE FINALLY RESOLVED BEFORE ISSUANCE OF A FINAL DECREE; PROVIDING THAT THE ATTORNEY GENERAL MAY INTERVENE IN THE PROCEEDINGS BEFORE THE WATER COURT ON ISSUE REMARKS THAT HAVE NOT BEEN OTHERWISE RESOLVED; PROVIDING THAT ISSUE REMARKS ARE EVIDENCE TO BE WEIGHED AGAINST THE PRIMA FACIE STATUS OF A WATER RIGHT CLAIM; PROVIDING THAT RESOLVING OBJECTIONS IS OF HIGHER IMPORTANCE THAN RESOLVING ISSUE REMARKS UNLESS OTHERWISE DETERMINED BY THE CHIEF WATER JUDGE; AMENDING SECTIONS 85-2-232, 85-2-233, 85-2-234, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Purpose. (1) Because the state of Montana is the owner of all water in the state, pursuant to Article IX, section 3, of the Montana constitution, the legislature recognizes that it is in the state’s best interest to ensure that valid issues raised as a result of claims examination in the statewide adjudication of pre-July 1, 1973, water rights are resolved before a final decree is issued.

(2) If as a result of the examination or the prior verification conducted by the department an issue remark is attached to a claim, the information resulting in the issue remark and the issue remark must be weighed against the claimed water right.

Section 2. Resolution of issue remarks other than by objection. (1) In resolving issue remarks other than through the objection process provided for in 85-2-233, the water court shall proceed as provided in this section.

(2) All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.

(3) The water court shall review each factual or legal issue remark not resolved as a result of the filing of an objection to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error.

(4) If an issue remark cannot be resolved pursuant to subsection (3), the water court shall notify the claimant in writing that each factual or legal issue remark must be resolved as provided in this section.

(5) (a) The water court shall require the claimant to confer with the department in an informal effort to resolve any identified issue remarks.

(b) If an issue remark is resolved to the satisfaction of the department and the claimant, the claimant, with the assistance of the department, shall prepare and file any documents that are needed to support the resolution. The department shall file a separate memorandum with its recommendation regarding the disposition of any issue remarks involved in the proposed resolution.

(c) If an issue remark is not resolved, the department shall file a notice with the water court informing the water court that the issue remark was not resolved.

(6) The water court shall schedule proceedings to resolve all issue remarks that remain unresolved pursuant to subsections (2) through (5). All proceedings must include the department pursuant to 85-2-243 and any parties appearing in opposition to the claim, including the attorney general if the attorney general has intervened.

(7) (a) If an unresolved issue remark involves nonperfection or abandonment, the water court shall join the state of Montana through the attorney general as a necessary party to resolve the issue remark. The water court shall notify the attorney general of the joinder.

(b) Except as provided in subsection (7)(a), for any claim containing an issue remark that has not been resolved pursuant to subsections (2) through (5), the attorney general may intervene as a matter of right.

(c) The attorney general may adopt rules to implement the responsibilities and duties of the attorney general imposed by this section.

(8) The water court shall hold an evidentiary hearing on any issue remark that remains unresolved pursuant to subsections (2) through (7).

(9) If a claimant fails to appear at a scheduled evidentiary hearing or fails to comply with an order issued by the water court in its review of issue remarks, the water court, upon motion or its own initiative, may, in its ruling:

(a) amend the elements of the claim to conform with the information in the claim file;

(b) amend the elements in the claim to conform with information obtained by the court;

(c) remove the issue remark; or

(d) terminate the claim.

(10) Following the conclusion of the evidentiary hearing and the expiration of any posthearing briefing schedule, the water court shall render its written decision.

(11) Any proposal by the claimant to resolve an issue remark without an evidentiary hearing must be in writing, signed by each owner of the claim at issue, and filed with the water court with any supporting documentation.

(12) The water court's decision on each issue remark that it reviews pursuant to this section must be documented in a master's report or water judge's order. The water court shall modify the abstract of each claim in accordance with its written decision and remove any applicable issue remark.

Section 3. Prioritization of workload. The chief water judge may place a higher priority on hearing objections to claims in a basin than on resolving issue remarks.

Section 4. Definition. For the purposes of [sections 1 through 3] "issue remark" means a statement added to an abstract of water right in a water court decree by the department or the water court to identify potential factual or legal issues associated with the claim. The term also includes "gray area remarks" that were the result of the verification process.

Section 5. Section 85-2-232, MCA, is amended to read:

"85-2-232. Availability of temporary preliminary or preliminary decree. (1) (a) The water judge shall send to the department a copy of a temporary preliminary decree or preliminary decree issued for a basin.

(b) The water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person who has filed a claim of existing right within the decreed basin or to that person's successor as documented in the department's records.

(c) The water judge shall also serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed basin.

(d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person or to that person's successor as documented in the department's records, who has filed a declaration of an existing right.

(e) The water judge shall enclose with a notice required under subsections (1)(b) through (1)(d) an abstract of the disposition of the claimed or declared existing right of a person identified in this section or that person's successor as documented in the department's records.

(f) The notice of availability required under this section must also be served upon:

(i) those issued or having applied for and not having been denied a permit to beneficially use water within the decreed basin pursuant to Title 85, chapter 2, part 3;

(ii) those granted a reservation within the decreed basin pursuant to 85-2-316; or

(iii) other interested persons who request service of the notice from the water judge.

(g) *When the water court provides notice to claimants of the opportunity to object, it shall include information explaining the right to appeal a water court decision as provided in 85-2-235.*

(2) The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the temporary preliminary decree or preliminary decree. The certificate is conclusive evidence of legal notice of entry of decree.

(3) Notice of the availability of a preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located. This notice must be provided before the final decree for the basin is issued.

(4) A person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge. The fee must be deposited in the state general fund.”

Section 6. Section 85-2-233, MCA, is amended to read:

“85-2-233. Hearing on temporary preliminary decree or preliminary decree — procedure. (1) (a) For good cause shown and subject to the provisions of subsection (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1);
or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), “good cause shown” means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(d) After March 28, 1997, a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the temporary preliminary decree is void; or

(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) Objections must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

(4) Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

(5) (a) Upon expiration of the time for filing counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree or preliminary decree or that person's successor as documented in the department records *and shall notify the attorney general* that objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed

objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The costs of the notice required pursuant to this subsection must be borne by the moving party.

(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

(10) The provisions of subsection (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence.

(11) (a) All issue remarks, as defined in [section 4], must be finally resolved before the issuance of a final decree."

Section 7. Section 85-2-234, MCA, is amended to read:

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree, and on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in [section 4], enter a final decree affirming or modifying the preliminary decree. ~~If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.~~

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, as follows:
 - (i) by flow rate for direct flow rights, such as irrigation rights;
 - (ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or
 - (iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land, if any, to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

- (a) the name and mailing address of the holder of the right;
- (b) the source or sources of water included in the right;
- (c) the quantity of water included in the right;
- (d) the date of priority of the right;
- (e) the purpose for which the water included in the right is currently used, if at all;
- (f) the place of use and a description of the land, if any, to which the right is appurtenant;
- (g) the place and means of diversion, if any; and
- (h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review.”

Section 8. Section 85-2-235, MCA, is amended to read:

“85-2-235. Appeals. (1) A person whose existing rights and priorities are determined in a final decree may appeal the determination only if:

(a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; ~~or~~

(b) the person’s rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person;

(c) *the person requested a hearing and appeared before the water court to finally resolve an issue remark, as defined in [section 4]; or*

(d) *the person is a claimant appealing an adverse decision when the water court issued the decision as the result of an evidentiary hearing or as the result of calling the claim in on the court’s own motion.*

(2) *The attorney general may appeal a determination made in a final decree if the attorney general participated as an intervenor as provided in [section 2].*

~~(2)~~(3) An interlocutory ruling by the water judge upon a question of law may be appealed by any party *who is* affected by the decision and who participated in the matter in which the ruling was issued.”

Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [sections 1 through 4].

Section 10. Coordination instruction. If House Bill No. 22 is not passed and approved, [this act] is void.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 527

[HB 790]

AN ACT REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT A STUDY ON SPLIT ESTATES OF PROPERTY BETWEEN MINERAL OWNERS AND SURFACE OWNERS RELATED TO OIL AND GAS DEVELOPMENT AND COAL BED METHANE RECLAMATION AND BONDING; PROVIDING FOR A SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY COUNCIL; PROVIDING THAT THE SUBCOMMITTEE SHALL, IF APPROPRIATE, SEPARATE THE STUDY INTO TWO STUDIES; PROVIDING FOR AT-LARGE MEMBERS ON THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 5-5-211 AND 15-36-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Interim study on split estates of mineral owners and surface owners related to oil and gas development and coal bed methane reclamation and bonding. (1) The environmental quality council provided for in Title 5, chapter 16, shall conduct an interim study on:

(a) split estates with regard to the ownership of minerals and the ownership of surface property related to oil and gas development;

(b) reclamation of surface property affected by coal bed methane development; and

(c) bonding requirements for coal bed methane production.

(2) (a) The environmental quality council shall establish a subcommittee to conduct the study and report back to the full council. The subcommittee members must be appointed by the chair of the environmental quality council with concurrence of the vice chair. The subcommittee must include:

(i) four members, two from each political party, who are legislators appointed to the environmental quality council;

(ii) two members who are public members of the environmental quality council; and

(iii) six at-large members who may be members of the legislature or the public and who are not currently serving on the environmental quality council.

(b) All of the members of the subcommittee have voting privileges on issues taken up by the subcommittee. The six at-large members provided for in subsection (2)(a)(iii) do not have voting privileges on the full environmental quality council. Any final recommendations and other work products that will be represented as being produced or endorsed by the environmental quality council must be finally approved by the environmental quality council.

(c) The at-large members provided for in subsection (2)(a)(iii) are entitled to the same compensation allowed for other members of the environmental quality council.

(3) The portion of the study addressing split estates must include but is not limited to:

(a) procedures and timelines for giving notice to surface owners;

(b) minimum provisions for surface use agreements;

(c) elements that should be considered in surface use agreements, including but not limited to road development, onsite water impoundments, and the quality and disposal of produced water;

(d) provisions for addressing disagreement on estimated damages between the surface owner and the mineral owner; and

(e) bonding requirements, if any, based on the type of activity.

(4) The portion of the study specifically addressing reclamation and bonding for coal bed methane operations must include but is not limited to:

(a) assessing current requirements for reclamation and bonding for coal bed methane operations and determining if they are adequate;

(b) evaluating laws related to surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation in other states;

(c) exploring alternatives and approaches for balancing mineral rights with surface rights;

(d) identifying the relationship between federal law and state law with regard to split estates and jurisdiction; and

(e) evaluating the necessity and feasibility of postoperation reclamation requirements or alternatives, including water pits and impoundments.

(5) The subcommittee shall, if appropriate, divide the issues into two separate studies.

(6) The environmental quality council shall complete the study by September 15, 2006, and report to the 60th legislature on its findings and recommendations, including any recommendations for legislation.

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 subsection (5)(b), the composition of each interim committee must be as follows:

(i) four members of the house, no more than two of whom may be of one political party; and

(ii) four members of the senate, no more than two of whom may be of one political 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 each political 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. 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. Section 15-36-331, MCA, is amended to read:

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

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

(2) ~~The~~ (a) *Except as provided in subsection (2)(b),* the amount of oil and natural gas production taxes collected for the privilege and license tax pursuant

to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) *In the 2007 biennium, up to \$50,000 may be allocated to the legislative services division for the purpose of a study of split estates of property between mineral owners and surface owners related to oil and gas development and coal bed methane reclamation and bonding.*

(3) (a) For ~~tax year 2003 and succeeding~~ *each tax years year*, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	2003	2004	2005	2006 and succeeding tax years
Big Horn	45.03%	45.04%	45.04%	45.05%
Blaine	57.56%	57.84%	58.11%	58.39%
Carbon	50.24%	49.59%	48.93%	48.27%
Chouteau	56.67%	57.16%	57.65%	58.14%
Custer	103.63%	92.27%	80.9%	69.53%
Daniels	48.31%	49.15%	49.98%	50.81%
Dawson	56.32%	53.48%	50.64%	47.79%
Fallon	39.89%	40.52%	41.15%	41.78%
Fergus	112.2%	97.86%	83.52%	69.18%
Garfield	54.51%	51.66%	48.81%	45.96%
Glacier	76.56%	70.65%	64.74%	58.83%
Golden Valley	55.5%	56.45%	57.41%	58.37%
Hill	66.97%	66.15%	65.33%	64.51%
Liberty	63.32%	61.53%	59.73%	57.94%
McCone	58.75%	55.81%	52.86%	49.92%
Musselshell	57.06%	54.25%	51.44%	48.64%
Petroleum	67.8%	61.21%	54.62%	48.04%
Phillips	53.3%	53.54%	53.78%	54.02%
Pondera	104.14%	87.51%	70.89%	54.26%
Powder River	64.7%	63.44%	62.17%	60.9%
Prairie	38.43%	39.08%	39.73%	40.38%
Richland	45.23%	45.97%	46.72%	47.47%
Roosevelt	46.75%	46.4%	46.06%	45.71%
Rosebud	37.41%	38.05%	38.69%	39.33%
Sheridan	46.64%	47.09%	47.54%	47.99%
Stillwater	56.05%	55.2%	54.35%	53.51%
Sweet Grass	58.23%	59.24%	60.24%	61.24%

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Teton	53.01%	50.71%	48.4%	46.1%
Toole	56.2%	56.67%	57.14%	57.61%
Valley	59.82%	57.02%	54.22%	51.43%
Wibaux	47.71%	48.19%	48.68%	49.16%
Yellowstone	50.69%	49.37%	48.06%	46.74%
All other counties	50.15%	50.15%	50.15%	50.15%

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

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

~~(a) for the fiscal year ending June 30, 2003, to be distributed as follows:~~

~~(i) a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and~~

~~(ii) all remaining proceeds to the state general fund;~~

~~(b)(a) for the fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2011, to be distributed as follows:~~

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

~~(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;~~

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

~~(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and~~

~~(v) all remaining proceeds to the state general fund;~~

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

~~(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;~~

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

~~(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and~~

~~(iv) all remaining proceeds to the state general fund."~~

Section 4. Appropriation. The \$50,000 allocated to the legislative services division in 15-36-331 is appropriated to the legislative services division from the state special revenue fund for use by the environmental quality council for the purposes provided in [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [Section 3] terminates September 15, 2006.

Approved April 28, 2005

CHAPTER NO. 528

[HB 802]

AN ACT ELIMINATING THE ANNUAL PERMIT SURCHARGE FEE FOR VIDEO GAMBLING MACHINES; AMENDING SECTION 23-5-612, 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 23-5-612, MCA, is amended to read:

“23-5-612. Machine permits — fees. (1) The department, upon payment by the operator of the ~~fees~~ fee provided in ~~subsections subsection (2) and (4)~~ subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of \$220 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator’s license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator’s license and if a machine transfer processing fee of \$25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit \$120 of the annual permit fee or for a prorated fee shall deposit \$90 for three quarters, \$60 for two quarters, and \$30 for one quarter collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

~~(4) (a) In addition to the annual permit fee charged under subsection (2), the department shall charge a \$10 annual permit surcharge fee for each video gambling machine that is on a licensed premises having fewer than 20 machines and a \$20 annual permit surcharge fee for each machine that is on a licensed premises having 20 machines. The annual permit surcharge fee must be prorated as provided in subsection (2)(a).~~

~~(b) The annual permit surcharge fee charged under subsection (4)(a) must be deposited in the state general fund.”~~

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

Section 3. Applicability. [This act] applies to permit fees charged on or after June 30, 2005.

Approved April 28, 2005

CHAPTER NO. 529

[SB 40]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CREATE A RURAL SPECIAL IMPROVEMENT DISTRICT UPON RECEIPT OF A PETITION CONTAINING THE CONSENT OF ALL OWNERS OF PROPERTY TO BE INCLUDED IN THE DISTRICT; EXEMPTING THE RESOLUTION OF INTENTION TO CREATE THE DISTRICT AND THE RESOLUTION TO CREATE THE DISTRICT FROM NOTICE, HEARING, AND PROTEST PROVISIONS IF CREATION OF THE DISTRICT IS THE RESULT OF THE PETITION; AND AMENDING SECTIONS 7-12-2102, 7-12-2105, 7-12-2109, AND 7-12-2113, MCA.

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

Section 1. Section 7-12-2102, MCA, is amended to read:

“7-12-2102. Authorization to create rural improvement districts — property owners may petition for creation. (1) Whenever the public interest or convenience may require, the board of county commissioners ~~is hereby authorized and empowered to~~ may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) *The board of county commissioners may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.*

~~(2)~~(3) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Property owners within the proposed district boundaries inside the city may not be included in the rural special improvement district if 40% of those property owners protest the creation of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.”

Section 2. Section 7-12-2105, MCA, is amended to read:

“7-12-2105. Notice of resolution of intention to create district — hearing — exception. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage of the resolution of intention as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner’s name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvement or improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) *The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2).*

Section 3. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district — exception. (1) ~~At~~ *Except as provided in subsection (2), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. 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. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.*

(2) *The provisions of subsection (1) do not apply if a resolution of intention to create the district is a result of a petition submitted as provided in 7-12-2102(2).*

(2)(3) (a) For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property.”

Section 4. Section 7-12-2113, MCA, is amended to read:

“7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention ~~therefore~~ introduced and passed by the board.

(2) The board ~~shall be deemed~~ *is considered* to have acquired jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when no protests have been delivered to the county clerk within ~~15~~ 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest ~~shall have~~ *has* been found by ~~said the~~ board to be insufficient or ~~shall have~~ *has* been overruled; ~~or~~

(c) when a protest against the extending of the proposed district ~~shall have~~ *has* been heard and denied; *or*

(d) *when a resolution creating the district is passed upon receipt of a petition as provided in 7-12-2102(2).*"

Approved April 28, 2005

CHAPTER NO. 530

[SB 41]

AN ACT INCORPORATING FUNDING PRINCIPLES FOR THE PURPOSES OF THE MONTANA MEDICAID PROGRAM; AND AMENDING SECTIONS 53-6-101 AND 53-21-139, MCA.

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

Section 1. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services.

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) *The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:*

(a) *protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;*

(b) *giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and*

(c) *giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.*

~~(2)~~(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
- (j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
- (k) health services provided under a physician's orders by a public health department; and
- (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

~~(3)~~(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
- (b) home health care services;
- (c) private-duty nursing services;
- (d) dental services;
- (e) physical therapy services;
- (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;
- (g) clinical social worker services;
- (h) prescribed drugs, dentures, and prosthetic devices;
- (i) prescribed eyeglasses;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) inpatient psychiatric hospital services for persons under 21 years of age;
- (l) services of professional counselors licensed under Title 37, chapter 23;
- (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- (n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
- (o) services of psychologists licensed under Title 37, chapter 17;
- (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
- (q) any additional medical service or aid allowable under or provided by the federal Social Security Act.

~~(4)~~(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in

amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections ~~(2)~~ (3) and ~~(3)~~ (4) to persons qualifying for medicaid under the medically needy category of assistance.

~~(5)~~(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(l)~~ (3)(l) but may include those optional services listed in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(q)~~ (4)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

~~(6)~~(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

~~(7)~~(8) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

~~(8)~~(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

~~(9)~~(10) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

~~(10)~~(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

~~(11)~~(12) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program *after taking into consideration the funding principles set forth in subsection (2)*.

~~(12)~~(13) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

~~(13)~~(14) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 2. Section 53-21-139, MCA, is amended to read:

“53-21-139. Crisis intervention programs. (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101~~(3)(j)~~(4)(j); and

(b) a targeted case management service authorized in 53-6-101~~(3)(n)~~(4)(n).”

Approved April 28, 2005

CHAPTER NO. 531

[SB 48]

AN ACT REMOVING THE CLASS EIGHT PROPERTY TAX PROVISION THAT WOULD HAVE PHASED OUT THE TAXATION OF CLASS EIGHT PROPERTY CONTINGENT ON A CERTAIN INCREASE IN STATE WAGES AND SALARIES; INCREASING THE CAP ON THE EXEMPT AGGREGATE MARKET VALUE OF CLASS EIGHT PROPERTY FROM \$5,000 TO \$20,000; AMENDING SECTIONS 15-6-138 AND 15-6-201, MCA, SECTION 27, CHAPTER 285, LAWS OF 1999, SECTION 31, CHAPTER 285, LAWS OF 1999, AND SECTION 5, CHAPTER 577, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-6-138, MCA, is amended to read:

“15-6-138. ~~(Temporary)~~ Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;
- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers;
- (m) theater projectors and sound equipment; and
- (n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

~~(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.~~

~~(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.~~

~~(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:~~

~~(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and~~

~~(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).~~

~~(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.~~

~~(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.~~

~~(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation.~~

(5) The class eight property of a person or business entity that owns an aggregate of \$20,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)

Section 2. Section 15-6-201, MCA, is amended to read:

“15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004;

(iii) 13.8% for tax year 2005;

(iv) 14.2% for tax year 2006;

(v) 14.6% for tax year 2007;

(vi) 15% for tax year 2008 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than \$15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; *and*

(ee) light vehicles as defined in 61-1-139; ~~and~~

~~(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:~~

~~(i) all agricultural implements and equipment;~~

~~(ii) all mining machinery, fixtures, equipment, tools, and supplies;~~

~~(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal~~

~~injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;~~

- ~~(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;~~
- ~~(v) all goods and equipment that are intended for rent or lease;~~
- ~~(vi) special mobile equipment as defined in 61-1-104;~~
- ~~(vii) furniture, fixtures, and equipment;~~
- ~~(viii) x-ray and medical and dental equipment;~~
- ~~(ix) citizens' band radios and mobile telephones;~~
- ~~(x) radio and television broadcasting and transmitting equipment;~~
- ~~(xi) cable television systems;~~
- ~~(xii) coal and ore haulers; and~~
- ~~(xiii) theater projectors and sound equipment.~~

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 3. Section 27, Chapter 285, Laws of 1999, is amended to read:

"Section 27. Repealer. ~~(1)~~ Sections 15-6-136, 15-24-901, 15-24-920, 15-24-926, 15-24-927, and 15-24-931, MCA, are repealed.

~~(2) Section 15-6-138, MCA, is repealed."~~

Section 4. Section 31, Chapter 285, Laws of 1999, is amended to read:

"Section 31. Effective dates. (1) [Sections 1, 11, 12, 15, 22, 26, 28 through 30, and 32 and this section] are effective on passage and approval.

(2) [Sections 3 through 9 and 23] are effective July 1, 2000.

(3) [Sections 2, 10, 13, 14, 16 through 21, 24, 25, and 27(1)] are effective January 1, 2003.

~~(4) [Sections 13(1)(aa) through (1)(ll) and 27(2)] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero."~~

Section 5. Section 5, Chapter 577, Laws of 2003, is amended to read:

"Section 5. Section 31, Chapter 285, Laws of 1999, is amended to read:

"Section 31. Effective dates. (1) [Sections 1, 11, 12, 15, 22, 26, 28 through 30, and 32 and this section] are effective on passage and approval.

(2) [Sections 3 through 9 and 23] are effective July 1, 2000.

(3) [Sections 2, 10, 13, 14, 16 through 21, 24, 25, and 27(1)] are effective January 1, 2003.

~~(4) [Sections 13(1)(aa) through (1)(ll) and 27(2)] are [Section 27(2)] is effective if the tax rate in [section 12], amending 15-6-138, reaches zero."~~

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2005

CHAPTER NO. 532

[SB 68]

AN ACT GENERALLY RECODIFYING THE LAWS EXEMPTING CERTAIN PROPERTY FROM TAXATION; AND AMENDING SECTIONS 15-6-134, 15-6-138, 15-6-201, 15-6-204, 15-6-205, 15-6-207, 15-6-220, 15-7-102, 15-8-111, 15-32-405, 61-3-560, AND 61-10-214, MCA.

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

Section 1. Section 15-6-134, MCA, is amended to read:

“15-6-134. Class four property — description — taxable percentage.

(1) Class four property includes:

(a) subject to ~~15-6-201(1)(z) and (1)(aa)~~ [section 5] and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to ~~15-6-201(1)(z) and (1)(aa)~~ [section 5] and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total 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, is not more than \$15,000 for a single person or \$20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to ~~15-6-201(1)(z)~~ [section 5(1)], all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, and 15-24-1502, property described in subsections (1)(a), (1)(b), *and* (1)(e), ~~(1)(f), and through~~ (1)(g) of this section is taxed at:

- ~~(i) 3.40% of its taxable market value in tax year 2003;~~
- ~~(ii) 3.3% of its taxable market value in tax year 2004;~~
- ~~(iii)~~(i) 3.22% of its taxable market value in tax year 2005;
- ~~(iv)~~(ii) 3.14% of its taxable market value in tax year 2006;
- ~~(v)~~(iii) 3.07% of its taxable market value in tax year 2007; and
- ~~(vi)~~(iv) 3.01% of its taxable market value in tax years after 2007.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$ 6,000	\$0 - \$8,000	20%
\$6,001 - \$9,200	\$8,001 - \$14,000	50%
\$9,201 - \$15,000	\$14,001 - \$20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under ~~15-6-201(1)(bb)~~ 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under ~~15-6-201(1)(c)~~ [section 6], and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal

injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under ~~15-6-201(1)(a)~~ [section 6], and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in ~~15-6-201~~ 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds ~~per~~ *an* axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:

(i) *W* is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) *CPI* is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)”

Section 3. Section 15-6-201, MCA, is amended to read:

“15-6-201. Exempt Governmental, charitable, and educational categories — exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

~~(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;~~

~~(i) truck canopy covers or toppers and campers;~~

~~(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;~~

~~(k) motor homes;~~

~~(l) all watercraft;~~

~~(m)~~(h) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

~~(n)~~(i) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

~~(o)~~(j) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; *and*

~~(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;~~

~~(q)~~(k) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection ~~(1)(q)~~ (1)(k), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

~~(B) repair and maintain machinery, equipment, appliances, or other personal property;~~

~~(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;~~

~~(s) harness, saddlery, and other tack equipment;~~

~~(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;~~

~~(u) timber as defined in 15-44-102;~~

~~(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;~~

~~(w) all vehicles registered under 61-3-456;~~

~~(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and~~

~~(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);~~

~~(y) motorcycles and quadricycles;~~

~~(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):~~

~~(i) 31% for tax year 2003;~~

~~(ii) 31.4% for tax year 2004;~~

~~(iii) 32% for tax year 2005;~~

~~(iv) 32.6% for tax year 2006;~~

~~(v) 33.2% for tax year 2007;~~

~~(vi) 34% for tax year 2008 and succeeding tax years;~~

~~(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):~~

~~(i) 13% for tax year 2003;~~

~~(ii) 13.3% for tax year 2004;~~

~~(iii) 13.8% for tax year 2005;~~

~~(iv) 14.2% for tax year 2006;~~

~~(v) 14.6% for tax year 2007;~~

~~(vi) 15% for tax year 2008 and succeeding tax years;~~

~~(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;~~

~~(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:~~

~~(i) the acquired cost of the personal property is less than \$15,000;~~

~~(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and~~

~~(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;~~

~~(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;~~

~~(ee) light vehicles as defined in 61-1-139; and~~

~~(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:~~

~~(i) all agricultural implements and equipment;~~

~~(ii) all mining machinery, fixtures, equipment, tools, and supplies;~~

~~(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;~~

~~(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;~~

~~(v) all goods and equipment that are intended for rent or lease;~~

~~(vi) special mobile equipment as defined in 61-1-104;~~

~~(vii) furniture, fixtures, and equipment;~~

~~(viii) x-ray and medical and dental equipment;~~

~~(ix) citizens' band radios and mobile telephones;~~

~~(x) radio and television broadcasting and transmitting equipment;~~

~~(xi) cable television systems;~~

~~(xii) coal and ore haulers; and~~

~~(xiii) theater projectors and sound equipment.~~

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an

individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

~~(3) For the purposes of subsection (1)(bb):~~

~~(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.~~

~~(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.~~

~~(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:~~

~~(a) \$20,000 in the case of a single-family residential dwelling;~~

~~(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."~~

Section 4. Property subject to fee in lieu of taxes. The following property that is subject to a fee in lieu of taxes is exempt from property taxation:

(1) truck canopy covers or toppers and campers;

(2) motor homes;

(3) all watercraft;

(4) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(5) all vehicles registered under 61-3-456;

(6) (a) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(b) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (6)(a);

(7) motorcycles and quadricycles; and

(8) light vehicles as defined in 61-1-139.

Section 5. Residential and commercial improvements — percentage of value exempt. (1) The following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f) is exempt from property taxation:

(a) 32% for tax year 2005;

(b) 32.6% for tax year 2006;

(c) 33.2% for tax year 2007;

(d) 34% for tax year 2008 and succeeding tax years.

(2) The following percentage of the market value of commercial property described in 15-6-134(1)(g) is exempt from property taxation:

(a) 13.8% for tax year 2005;

(b) 14.2% for tax year 2006;

(c) 14.6% for tax year 2007;

(d) 15% for tax year 2008 and succeeding tax years.

Section 6. Personal and other property exemptions. The following categories of property are exempt from taxation:

(1) harness, saddlery, and other tack equipment;

(2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(a) construct, repair, and maintain improvements to real property; or

(b) repair and maintain machinery, equipment, appliances, or other personal property;

(3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(4) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(a) the acquired cost of the personal property is less than \$15,000;

(b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(c) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; and

(8) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers,

gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

- (d) all manufacturing machinery, fixtures, equipment, tools, and supplies;
- (e) all goods and equipment that are intended for rent or lease;
- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment;
- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers; and
- (m) theater projectors and sound equipment.

Section 7. Timber exemption. Timber, as defined in 15-44-102, is exempt from taxation.

Section 8. Section 15-6-204, MCA, is amended to read:

“15-6-204. ~~Moneys~~ Money and credits exemption. (1) ~~Moneys~~ Money and credits are exempt from taxation.

(2) ~~Moneys~~ Money and credits are, hereby defined for the purpose purposes of taxation as *this section*, all moneys not constituting moneyed capital as hereinafter defined money and all credits secured and unsecured, including all state, county, school district, and other municipal bonds, warrants, and securities, without any deduction or offset; provided, however, that credits as herein defined shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana.”

Section 9. Section 15-6-205, MCA, is amended to read:

“15-6-205. State water conservation projects exempt. All lands acquired and held by the department of natural resources and conservation or the state of Montana for use in connection with water conservation projects constructed or to be constructed under the laws of this state shall be exempt from taxation, and it shall be the duty of the county treasurer to ~~shall~~ cancel all taxes remaining unpaid against said on the land for the year in which ~~same~~ the land is so acquired and for all previous years, provided that such. The taxes shall may be canceled only in such cases as if no a tax certificates certificate shall have has not been issued or, if a tax certificate has been issued, it was issued to the county and no an assignment of such the certificate of sale has not been made by said the county prior to the time when said that the land was acquired by said the department.”

Section 10. Section 15-6-207, MCA, is amended to read:

“15-6-207. Agricultural producer exemptions — products — unused beet equipment — low value buildings, implements, and machinery. (1) The following agricultural products are exempt from taxation:

- (a) all unprocessed agricultural products on the farm or in storage and owned by the producer;
- (b) all producer-held grain in storage;

- (c) all unprocessed agricultural products;
- (d) all livestock and the unprocessed products of livestock;
- (e) poultry and the unprocessed products of poultry;
- (f) bees and the unprocessed product of bees; and
- (g) biological control insects.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if the implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area.

(3) *All farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100 are exempt from taxation.*

(4) *As provided in [section 6(8)], all agricultural implements and equipment are exempt from taxation if the tax rate in 15-6-138 reaches zero."*

Section 11. Section 15-6-220, MCA, is amended to read:

"15-6-220. Exemption for Agricultural processing facilities exemption — canola facilities and — malting barley facilities — industrial dairy — ethanol. (1) The following property is exempt from property taxation:

(a) machinery and equipment used in a canola seed oil processing facility;
~~and~~

(b) machinery and equipment used in a malting barley facility;

(c) *personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy; and*

(d) *all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility.*

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) "Industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(4) "Industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

~~(5)~~(5) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and

equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.”

Section 12. Nonfossil energy generation. The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(1) \$20,000 in the case of a single-family residential dwelling;

(2) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

Section 13. Section 15-7-102, MCA, is amended to read:

“15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under ~~15-6-201(1)(z) and (1)(aa)~~ [section 5] or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer’s informational purposes:

(i) the total amount of mills levied against the property in the prior year; and

(ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices

required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 14. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any

compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization of net income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under ~~15-6-201(1)(z) and (1)(aa)~~ [section 5].

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

- (a) ownership of the improvements is different from ownership of the land;
- (b) the taxpayer makes a written request; or
- (c) the land is outside an incorporated city or town.”

Section 15. Section 15-32-405, MCA, is amended to read:

“15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-31-124 and 15-31-125, may be claimed for the investment. Property tax reduction allowed by ~~15-6-201(4)~~ [section 12] may not be applied to a facility for which a credit is claimed pursuant to this part.”

Section 16. Section 61-3-560, MCA, is amended to read:

“61-3-560. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsections (2) and (3), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) The following vehicles are exempt from the fee imposed in subsection (1):

(a) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), ~~(1)(m)~~ (1)(h), ~~(1)(e)~~ (1)(j), or ~~(1)(q)~~ (1)(k), or ~~(1)(w)~~ [section 4(5)], 15-6-203, or 15-6-215, except as provided in 61-3-520;

(b) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(c) a light vehicle registered under 61-3-456.

(3) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(4) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire registration period.”

Section 17. Section 61-10-214, MCA, is amended to read:

“61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a dealer's or wholesaler's plate as provided in 61-4-102 and 61-4-125 are exempt from this part for a period not to exceed 7 days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), ~~(1)(h)~~ (1)(j), or ~~(1)(i)~~ (1)(k); and ~~(1)(v)~~ [section 4(4)] are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Section 18. Codification instruction. [Sections 4, 5, 6, 7, and 12] are intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [sections 4, 5, 6, 7, and 12].

Section 19. Coordination instruction. If Senate Bill No. 48 is passed and approved and it removes the class eight property tax provision that would have phased out the taxation of class eight property contingent on a certain increase in state wages and salaries, then [section 6] of [this act] must read as follows:

NEW SECTION. Section 6. Personal and other property exemptions. The following categories of property are exempt from taxation:

- (1) harness, saddlery, and other tack equipment;
- (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
 - (a) construct, repair, and maintain improvements to real property; or
 - (b) repair and maintain machinery, equipment, appliances, or other personal property;
- (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (4) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;
- (5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
 - (a) the acquired cost of the personal property is less than \$15,000;
 - (b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
 - (c) the lease of the personal property is generally on an hourly, daily, or weekly basis;
- (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that

business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; and

(7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.”

Approved April 28, 2005

CHAPTER NO. 533

[SB 75]

AN ACT CLARIFYING THE PROCEDURE WHEN AN APPLICANT BEFORE A COUNTY TAX APPEAL BOARD HAS THE APPLICATION AUTOMATICALLY GRANTED BECAUSE OF THE COUNTY TAX APPEAL BOARD'S REFUSAL OR FAILURE TO HEAR THE APPEAL; PROVIDING NOTICE OF THE ACTION TO THE DEPARTMENT OF REVENUE, STATE TAX APPEAL BOARD, AND AFFECTED MUNICIPAL CORPORATIONS; AUTHORIZING AN APPEAL TO THE STATE TAX APPEAL BOARD BY THE DEPARTMENT OF REVENUE OR A MUNICIPAL CORPORATION; AND AMENDING SECTIONS 15-15-103 AND 15-15-104, MCA.

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

Section 1. Section 15-15-103, MCA, is amended to read:

“15-15-103. Examination of applicant — failure to hear application.

(1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application with regard to the value of the property of the person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) (a) Except as provided in 15-15-201, if a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(~~a~~)(i) those listed in 15-2-302; and

~~(b)(ii)~~ if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current session.

(b) The county tax appeal board shall provide written notification of each application that was automatically granted pursuant to subsection (2)(a) to the department, the state tax appeal board, and any affected municipal corporation. The notice must include the name of the taxpayer and a description of the subject property."

Section 2. Section 15-15-104, MCA, is amended to read:

"15-15-104. Appeal to state tax appeal board. (1) If the appearance provisions of 15-15-103(1) have been complied with, a person or the department ~~of revenue~~, on behalf of the state, or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

(2) If an appeal has been automatically granted by a county tax appeal board pursuant to 15-15-103(2), the department, on behalf of the state, or any municipal corporation aggrieved by the action may appeal to the state tax appeal board under 15-2-301. The time for filing an appeal commences on receipt by the department of the written notification required by 15-15-103(2)(b)."

Approved April 28, 2005

CHAPTER NO. 534

[SB 81]

AN ACT REDUCING THE NUMBER OF DAYS THAT A MEMBER OF THE MONTANA NATIONAL GUARD MUST BE ON ACTIVE DUTY BEFORE BEING ELIGIBLE FOR RELIEF UNDER THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; AMENDING SECTION 10-1-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-1-902, MCA, is amended to read:

"10-1-902. Definitions. As used in this part, the following definitions apply:

(1) "Active duty" means at least ~~30~~ 14 consecutive days of full-time state active duty ordered by the governor pursuant to Article VI, section 13, of the Montana constitution or of full-time national guard duty, as defined in 32 U.S.C. 101.

(2) "Dependent" means the spouse or minor child of a service member or any other person legally dependent on the service member for support.

(3) "Military service" means active duty with a Montana army or air national guard military unit.

(4) "Service member" means any member of the Montana army or air national guard serving on active duty."

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

Approved April 28, 2005